United States Court of Appeals

for the Second Circuit

APPENDIX

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75-1149

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 75-1149

UNITED STATES OF AMERICA

Appellee,

—against—

VINCENT PACELLI, JR.

Appellant.

APPENDIX, VOLUME TWO

COPY RECEIVED
PAUL J. CURRAN
MAY 19 1975
U.S. ATTORNEY
SOUTHERN DIST. N.Y.

STEVEN B. DUKE
PIERCE O'DONNELL
Attorneys for Appellant Pacelli
127 Wall Street
New Haven, Conn.
(203) 436-3610

UNITED STATES COURT OF APPEALS
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A No, I don't think so.

Q And you didn't mention Al Bracer at all in any of those statements, did you?

A No.

Q When these women appeared at the -- was it a door or a window --

A A window.

Q Was it a full length window or a short window?

A A picture window.

Q What kind of clothes werethey wearing?

A I think Beverly Pacelli had a robe on and Ida Bracer was dressed, I believe.

Q Why did you toss pebbles on the window?

A To attract their attention to come to the window, because if I had gone to the front door at that time at night and rung the bell it would have alarmed everyone in the apartment, because no one came to the apartment unless they were expected.

b2

Q Don't you think it would alarm people to throw pebbles at their bedroom window?

A In this case, sir, it would have alarmed a lot more if somebody had just rung a bell at that hour of the night rather than threw pebbles to the window.

Q Why didn't you talk to them on the intercom and

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say, "This is Barry. Let me in."

A I just thought it was better to throw the pebbles at the window and attract their attention that way.

Q Do you think that would have alarmed them if you buzzed and said, "This is Barry. I want to see you?"

A Maybe not. But I just thought that throwing the pebbles would be a better way of doing it than going around to the front and ringing the bell or the intercom.

Q You thought that would alarm them less than saying, "This is Barry Lipsky"?

A That is correct.

Q They let you in and you went up in the apartment?

A I went into the apartment and they let me in.

Q Who was there?

A Pacelli, his wife, Beverly, Barbara Jalaba, Al Bracer and Ida Bracer, his wife.

Q Was Abby Perez there?

A I don't recall Abby Perez being there. I don't believe he was there.

Q He was there later that night, wasn't he?

A The next morning.

Q But he was not there the night before? He wasn't there when you first arrived at the apartment?

A Not to my knowledge, no, he was not.

Q Did your attorney move to suppress these statements of March 2nd and March 3rd in your old murder case?

A Yes, he did.

Q Did you have a hearing that lasted four or five days in November, 1972?

A Yes, I did.

Q Out in Nassau County?

A That is correct.

Q Did Sergeant Bonora testify in that hearing?

A I believe he did.

Q Did you hear him testify?

A I heard him very well.

Q Did you hear him testify that you told him that Febre told you in the Hippo, "She's got a problem. I think you can handle it."

A Do I remember Sergeant Bonorosaying that in the hearing?

Q Yes.

A He may have said that. I don't remember.

MR. EDWARDS: Objection on relevance. It's hearsay.

THE COURT: I will let it stand.

Q Mr. Lipsky, you sat through the entire hearing, did you not, the suppression hearing?

A I think I was there for the whole hearing.

Q How many police officers testified concerning your interrogation?

A Oh, five or six or seven or more. I am not sure.

Q How many federal agents?

A One, I think.

Q Did you take notes on this testimony?

A Yes, I think so.

Q Did you record in your notes all the lies that you thought were being told by the police officers?

A Yes, sir.

MR. DUKE: May I have this marked, please.

xx (Defendant's Exhibit V marked for identification.)

Q Do you remember if you wrote down, made any notes about what Sergeant Bonora said you told him Febre had said?

MR. EDWARDS: Your Honor, could we approach on this?

THE COURT: Are you objecting?

MR. EDWARDS: I am.

THE COURT: Sustained.

Q Did you hear Sergeant Bonora testify that you told him that you made $1,800 in 1971?

MR. EDWARDS: Objection, your Honor.

THE COURT: Sustained.

MR. DUKE: Your Honor, I have several questions along this line. May we confer at the side bar?

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THE COURT: All right.

(At the side bar.)

MR. DUKE: Your Honor, I think that the circumstances of his failure to record his disagreement with the testimony and the adoption of the truth of it --

MR. EDWARDS: I don't understand what Mr. Duke means, his failure to record his disagreement.

MR. DUKE: He is sitting there, he is on trial for his life, and these were police officers testifying about what he told him, and he is making notes about what is true and what is false in their testimony. His failure to make any notes or otherwise contradict or disagree with what they say is circumstantial evidence of his acquiescence of the truth of their testimony.

MR. EDWARDS: I can answer that right now. He was under no obligation to testify in that suppression hearing, and, indeed, did not testify at the suppression hearing. The proposition that his failure to make a note on a piece of paper as to everything he either agreed with or disagreed with, that that creates some kind of implied admission or otherwise is absolutely preposterous. Like anyone else, he is sitting at such a proceeding. He made notes when he felt like; he didn't make them when he didn't feel like. I never heard of such a theory.

THE COURT: I think so, Mr. Duke. It seems to me it's not really very probative.

MR. DUKE: I would like then to make an offer of proof on the following grounds:

I would offer to prove that Sergeant Bonora testified that Lipsky told him that he made $1,800 in 1971; I offer to prove that the sergeant said that Febre told him, "She's got a problem. I think you can handle it"; that the car used in the killing was rented through a neighbor, under a neighbor's name; that Lipsky threw the pocketbook in the garbage can near where the knife was thrown.

THE COURT: You are offering to prove that Sergeant Bonora made those statements?

MR. DUKE: He testified under oath in the suppression hearing and in Lipsky's notes, which is presently 3516 there is no reference to any of this testimony.

MR. EDWARDS: I oppose Sergeant Bonora's testimony.

THE COURT: He is making an offer of proof.

MR. EDWARDS: It should be excluded for the following reason: Sergeant Bonora's testimony is hearsay insofar as this proceeding here in court today is concerned. I would have to have the opportunity to cross-examine Sergeant Bonora. It's perfectly evident that Sergeant Bonora took down any written confession which Lipsky signed, and, of course, that

is admissible in evidence as to what Lipsky told Bonora. But if we are to have any more testimony as to what Lipsy told Bonora, there are two ways to do it: One is to ask Lipsky as to what he told him and then they can call Bonora as a witness.

THE COURT: I have already ruled on this. I agree with you.

I think we will take a short recess now.

(In open court.)

THE COURT: Ladies and gentlemen, we will take a short recess.

(Recess.)

(In open court; jury present)

MR. WALL: Your Honor, may we approach the side bar briefly?

THE COURT: Yes.

(At the side bar)

THE COURT: Incidentally, before we proceed, there is one thing I have been meaning to mention. Sometime yesterday you indicated, I think, Mr. Duke, or Mr. Wall, that Mr. Pacelli wanted to attend a session in the robing room. I guess it had to do with that immunity point.

Of course, Mr. Pacelli may attend any session in the robing room. You don't have to ask permission.

MR. DUKE: Your Honor, prior to the recess, when I was questioning Mr. Lipsky about his statement to Scaring, Mr. Edwards stood up and made another remark about suggesting that I offer the thing into evidence. I didn't mean by my silence to acquiesce in that.

THE COURT: It seemed to me that it's in evidence. You read it into evidence, in effect.

MR. DUKE: It's offered as a prior inconsistent statement.

THE COURT: Do we need a document?

MR. EDWARDS: Your Honor, may I say this: He was reading from a paper that was not in evidence, and I

naturally assumed and continue to assume that he knows the rule that you are not permitted to read from papers not in evidence and, therefore, I assumed that he was offering it in evidence and said that to clarify the situation.

Your Honor, the further question, I take it, is whether it comes in merely as a prior inconsistent statement or for the truth of the matter. This, your Honor, I am sure he is only offering it as a prior inconsistent statement.

THE COURT: He just said so.

MR. EDWARDS: However, this will very rapidly become a purely academic exercise on an irrelevant point, because as the memorandum I have submitted on prior consistent statements makes clear, it is the law in this Circuit that when I offer these as prior consistent statements on redirect through Lipsky, they come in not merely as prior consistent hearsay statements, they come in for the truth of the matters asserted therein, because Lipsky, the man through whom I will offer them, is present and is subject to cross-examination on those statements.

That is in Memorandum VII, your Honor.

Therefore, I think we need not trouble ourselves further with this point at the present time. I understand

Mr. Duke has only offered it as a prior inconsistent statement. When I make my offer, as I say, I think the problem will be entirely academic.

MR. DUKE: Your Honor, I haven't read Mr. Edwards' memo, but I will object to prior consistent statements on the ground that they are -- there has been no suggestion of recent fabrication, and I think the only portions of those statements that are arguably admissible are those that tend to clarify that which I asked him about.

MR. EDWARDS: Also, your Honor, I have another memo on the doctrine of completeness. However, the authorities I cite on putting them in --

THE COURT: Is that one of the memos you gave me a few minutes ago?

MR. EDWARDS: Yes, your Honor. I don't remember whether it's V or VI, on the doctrine of completeness.

In my Memo No. VII on prior consistent statements, the authorities are very clear in this Circuit that if the allegation of recent fabrication is in any way raised in the trial, express or implied, I am entitled to put those in, and obviously we have heard endless testimony concerning all the Federal Government's alleged activities to assist Mr. Lipsky, and obviously the suggestion is that Lipsky is

testifying as he is, at least in part, all the efforts and deals, et cetera, allegedly arranged on his behalf by the Federal Government and, therefore, the law is completely clear, as will be seen in that memo, that I can put in these statements that he made before he entered into any arrangements with the Federal Government whatsoever, or indeed any arrangements with the authorities in Nassau, but that will come at a later time.

THE COURT: Yes, both Mr. Duke and I have not read your memos.

Going back to what you said at the outset, Mr. Duke, I understood Mr. Edwards to ask only whether you were going to put into evidence the statements, the portion that you were reading, not the whole statement, just the portions you were reading.

MR. DUKE: Yes, I understood that. I would like to register my objection a second time to those remarks being made in the presence of the jury.

MR. EDWARDS: I think they were proper because he was reading from a paper not in evidence, and I assume he knows the rule.

MR. DUKE: I don't think there is any such rule.

THE COURT: It depends on the purpose. If it is just being used to refresh his recollection, you don't

have to put it into evidence, for example. And if it's being used for impeachment purposes, I'm not sure.

MR. DUKE: I'm offering it into evidence as a prior inconsistent statement to impeach him.

MR. EDWARDS: That's fine.

So it's in evidence.

T6 2 Q Did you tell Sergeant Bonora on March 3, 1972, that you made approximately $1,800 in 1971?

A I don't remember telling him that. I may have told him that, though, Mr. Duke. I don't recall saying that figure to him.

Q Did you tell Sergeant Bonora Febre said to you in the Hippo, "She's got a problem. I think you can handle it"?

A I also may have said that to him. I may have said that. I don't recall using those words to Sergeant Bonora. I don't recall saying it, but I may have said it.

Q Did you tell Sergeant Bonora on March 3, 1972, that when you went to Pacelli's apartment that only Pacelli, his wife and Abby were present?

MR. EDWARDS: May I have the question read?

(Question read.)

MR. EDWARDS: I will ask for clarification, because we have a written statement that he signed for the sergeant and I think the question ought to make clear as to whether he is referring to the written statement signed by Lipsky or referring to some other oral conversation or what.

MR. DUKE: I am referring to the oral conversation.

A I believe I told Sergeant Bonora orally that Pacelli was there, his wife was there, Barbara Jalaba was

there, and at some point, at some point I remember that night and the next morning I do recall mentioning Abby Perez was there. But I don't remember exactly when I mentioned Abby Perez being there.

Q Did you tell him that Abby was there when you arrived at Pacelli's apartment the first time?

A No, I don't think I told him that Abby was there when I first arrived there.

Q Are you certain?

A I'm not certain. To the best of my memory as I sit there now I'm not certain that I didn't tell him that Abby was there or not there when I first arrived.

Q Did you tell him that the car used in the killing was rented through a neighbor or under a neighbor's name?

A I may have.

Q Is it your best recollection that you did or that you didn't?

A I'm very hazy on that. I am not sure of what I told Sergeant Bonora orally. It's quite a long time ago. I don't remember. I may have told him that I thought the car was rented through a neighbor or under a neighbor's name.

Q Did you tell him that you threw Patty Parks' pocketbook in a garbage can near where the knife was thrown?

A I don't remember telling Sergeant Bonora that, but I do remember that I did throw the --

Q The question is what you told Sergeant Bonora, not what you did. Did you tell him that you threw the pocketbook in the garbage can near the place near where the knife was thrown?

MR. EDWARDS: He has answered.

THE COURT: I think so.

MR. DUKE: I think the answer was totally unresponsive.

THE COURT: Let's have his answer, Mr. Reporter.

(Record read.)

THE COURT: I think he answered the question.

Q Is it your testimony that Barbara Jalaba was in the apartment when you arrived that night for the first time?

A To the best of my memory I remember Barbara Jalaba being in the apartment when I arrived there.

Q And Ida Bracer?

A What about her?

Q Was she there, too?

A Yes, she was there.

Q And Al Bracer?

A He was there.

Q What was Barbara Jalaba wearing?

A I don't know. I don't remember, Mr. Duke, if she had on a robe or clothes. It's quite some time. I don't remember what she was wearing.

Q What was Al Bracer wearing?

A Clothes. He was dressed.

Q What was Ida Bracer wearing?

A I answered that for you before, she was wearing clothes.

Q What was Barbara Jalaba wearing?

A To the best of my memory a robe, bathrobe.

Q And what was Vincent Pacelli wearing?

A Undershirt and undershorts.

Q He was in the living room with all these people, Mr. Pacelli was, in his underwear?

A He had a T shirt and long boxer undershorts.

Q And the Bracers were both fully dressed?

A I just told you that.

Q Now, in your written statement, Mr. Lipsky, March 2, 1972, and your statement to Mr. Scaring, you didn't say anything about Barbara Jalaba being present that night, did you?

A I don't remember, Mr. Duke. Can you refresh my memory?

Q I will refresh your memory by suggesting that you didn't say that Barbara Jalaba was present in the apartment when you first arrived.

MR. EDWARDS: I am sorry. May we have that read?

(Question read.)

MR. WALL: Objection as to form, your Honor.

THE COURT:Sustained.

Q Mr. Lipsky, did you say in your statement of March 2nd both he and Beverly were at the door, he was dressed in his underwear and she had a robe on?

MR. EDWARDS: Your Honor, I think we ought to identify which of the several statements of March 2nd she means.

MR. DUKE: The written statement.

MR. EDWARDS: The written and signed or written Q and A.

MR. DUKE: There is only one written statement of March 2nd.

MR. NESLAND: Handwritten, you mean?

MR. DUKE: Handwritten.

THE COURT: All right.

Q In your handwritten statement of March 2nd did you say both he and Beverly were at the door, he was dressed in his underwear and she had a robe on?

A Yes, I think I said that in that statement.

Q Did you say anything about Barbara Jalaba being present?

MR. EDWARDS: Is the question, did he mention her being present anywhere in that document?

MR. DUKE: That is the question.

Q Are you ready to answer the question?

A Yes. Would you ask me the question?

Q Did you say anywhere in that handwritten statement of March 2nd that Barbara Jalaba was in the apartment when you arrived there?

A I don't see anywhere in this statement where I said that Barbara Jalaba was there.

Q Mr. Lipsky, prior to February 4, 1972, when did you first hear of these bits of conversation or gossip about Patsy Parks?

MR. EDWARDS: Your Honor, a request for clarification. I assume he means bits of conversation about Patsy Parks in connection with the so-called box and grand jury.

Q Mr. Lipsky, when did you first hear about Patsy Parks having been to a grand jury about a box?

A I don't remember exactly when I first heard it, Mr. Duke, but it was some time after Pacelli was arrested on a narcotics charge and in the months some time between

his arrest and the time I saw him in the Hippo. I don't remember exactly what month, but it was in 1971.

Q It was in 1971?

A And I also could have heard some of the same bits and pieces of conversation early in 1972.

Q I am talking about the first time you heard it? The first time was in 1971?

A I believe so.

Q Now, you used to see Mr. Pacelli around the discotheques and the nightclubs frequently, didn't you?

A When?

Q In late 1971.

A Yes, sure.

Q And early 1972?

A Yes.

Q Did you speak to him when you saw him?

A Yes, of course.

Q Did you tell him what you heard about Patsy Parks and the grand jury and the box?

A No, I didn't tell him.

Q You didn't relate to him this gossip that you heard?

A No, Mr. Duke, I heard it from him.

Q When?

A As I just told you, when he was talking to me and to other people who were usually driving with Pacelli and myself in a car.

Q When? In 1971?

A In 1971 some time after he had been arrested on a narcotics charge up until the time at the Hippopotamus on February 3rd I had heard a few times snatches of conversation where he was speaking to sometimes me and--

Q Never mind who he was talking to. Were other people conversing about this as well, other people than Mr. Pacelli?

A You mean was he conversing with other people?

Q In your presence.

A Yes.

Q Concerning Patsy Parks and the grand jury and the box?

A Yes.

Q Did you discuss it with other people when he wasn't present?

A I don't believe so.

Q Did anybody else discuss it in your presence when Mr. Pacelli was not present?

A To the best of my memory, no.

Q That was the idle gossip?

A What was the idle gossip? The conversation?

Q Yes.

A Yes.

Q Do you know when Mr. Pacelli was arrested on this charge?

A Which charge?

Q The narcotics charge that you referred to.

A It was prior to June 1971. I'm not sure. I think it was in March or April of 1971. I'm not sure of the date, but it was -- I think it was in March or April of 1971. I'm not exactly sure.

Q Mr. Lipsky, when you and Mr. Pacelli started driving back to Manhattan that night, and you stopped at the gas station, did you first buy one can of gas or two?

A Are you talking about when we were driving to the Hippo to get Patsy Parks?

Q Yes.

A To my best recollection, I went in and bought two cans of gasoline.

Q In your handwritten statement of March 2nd, didn't you say it was only one can of gas?

A I may have said that then, but to the best of my memory --

Q That's all I want to know is what you said.

A I'm trying to tell you, Mr. Duke.

Q Did you say that you only got one can of gas first?

A I don't remember if I said I got one can of gas

first.

Q Do you have that before you? Is that the March 2nd statement?

A Yes.

Q Would you look at Page 4?

A Yes. I see what you are referring to.

Q Did you say in that statement that you got one can of gas first?

A Yes, I did.

Q Did you say anything in that statement about having a conversation with a gas station attendant?

A I don't remember if it's in that statement, but I do remember having a conversation with the attendant.

Q Your statement of March 3rd, Mr. Lipsky, your statement to Mr. Scaring, did you say that after you threw the pebbles at the window -- that's Page 12 -- and his wife looked out the window, did you say that?

A I may have said that then, Mr. Duke.

Q That's all I want to know, Mr. Lipsky.

And did you say that Mr. Pacelli answered the door when you came up? When you came upstairs and entered the room --

A Oh, I don't remember if I said that he answered the door, or that he and his wife answered the door.

Q You didn't say that anybody else was there, did you?

MR. EDWARDS: "Was there," your Honor? He answered before. I think the question is confusing.

Q Mr. Lipsky, did you say, "And they rang the buzzer for me to come through the doors. I came upstairs and he answered the door, with his wife"?

Did you say that?

A I think I said that.

Q And did you say that after you got into the room and had a conversation with them, "And then he told his wife to go in the other room and close the door"? Did you say that?

A I think I said that.

Q Did you say anything about anybody else being in the apartment?

A I've seen that statement.

Q Do you want to see it?

A Yes.

Yes, I see it, Mr. Duke.

Q Is there any reference to anybody other than Pacelli and his wife being in the house, in the apartment, when you first arrived?

A I don't see any reference to anyone else, Mr.

Duke.

THE COURT: Mr. Lipsky, may I see that?

Q I believe it was on Tuesday you told the jury that Al Bracer told three women to leave the room.

Is there any reference to Al Bracer or three women in that statement?

A I haven't read the whole thing, Mr. Duke, but I don't think so. I don't think there is any mention about Al Bracer.

Q Or three women?

A Or the other two women in question.

THE COURT: Mr. Duke, what's the number of this?

MR. DUKE: It is -- I am sorry. I don't see it.

MR. NESLAND: 3551, your Honor.

MR. DUKE: I have lost the cover.

3551, your Honor.

Q Mr. Lipsky, when you came back to the Hippopotamus and you entered and you had a conversation with Patsy Parks and she left -- how long were you in there between the time you came in and talked to her and she left?

A About ten minutes.

Q What did you and Patsy Parks do during that ten minutes?

A I sat down next to where she was sitting at a

table with some other people and I whispered in her ear.

Q You told her -- you gave her the information that you have already testified about.

Did you talk to her about anything else?

A Not that I can recall.

Q Was Benny Febre at that table?

A No, he wasn't at that table.

Q When she left, what did you do?

A I got up and went back to the table where I had originally been sitting earlier in the evening.

Q Was Benny Febre there?

A Yes, he was there.

Q How long did you sit with Benny Febre?

A About ten minutes.

Q Did you have a conversation with him?

A I didn't say a word to Benny Febre.

Q Did he say a word to you?

A He didn't say a word to me.

Q Isn't Benny Febre an old friend of yours? Wasn't he at that time an old, close friend of yours?

A He was a friend of mine for a few years.

Q Five or six years?

A Something like that.

Q In fact, you lived with him, didn't you?

A I had previously lived with him.

Q When had you lived with him?

A From sometime in January '71 for a few months, until just around after Easter 1971; three or four months.

Q And Marge Jacklone was an old friend of yours, too, wasn't she?

A Yes.

Q How long had she been a friend of yours?

A Since around 1967 when I first met her.

Q Had she been a girl friend of Frank Serrano at one time?

A Yes.

Q And had she been Benny Febre's girl friend at one time?

A Yes.

Q And she was your partner in the narcotics business?

A Yes.

Q Are you quite certain, Mr. Lipsky, that not one word passed between you and Benny Febre during the ten minutes that you were sitting at the table with him?

A To the best of my memory, as I sit in this chair today, when I came back to that club and sat down at the table where Benny Febre was opposite me, like you are now,

I didn't say one word to him and he didn't say one word to me. We just looked at each other.

Q How far across the table was he?

A About from me to that brown metal caginet there in front of Mr. Edwards; right there.

Q Eight, ten feet?

A Yeah. It's a U-shaped booth.

Q And he is on one end of the U and you are on the other end?

A Yes.

Q Who else was in the booth?

A I don't remember exactly who was in the booth when I sat back down there, and Febre and I were sitting there. Margie Jacklone may have been sitting there, but I don't recall for sure.

There were one or two other people sitting there but I don't recall right now who they were.

Q When you got back to the apartment, Pacelli's apartment, the next day or later on February 4th, was Al Bracer there?

A No.

Q Abby was there, wasn't he?

A When?

Q When you got back to the apartment after the

Parks killing.

A I think Abby was there.

Q Was he in bed?

A Yes. To my best recollection, he was downstairs sleeping.

Q And what time was it that you first arrived in this apartment? That is, when you went up to see Pacelli, what time did you enter that apartment?

A When I first went up to see him and threw the pebbles?

Q Yes.

A Somewhere between 1:00 a.m. and 2:00 a.m., I think. I'm not sure of the time.

Q Did they have the TV on when you came in at that time?

A It may have been on. I don't recall.

Q Did you know, Mr. Lipsky, on February 4, 1972, did you know where Nassau County was?

A Not exactly, but I think I knew it was out on Long Island somewhere.

Q When you were riding in the car, was Patsy Parks kissing Mr. Pacelli?

A Yes.

Q Did she tell him that she loved him?

Q You are quite certain of that?

A You are talking about in writing?

Q A piece of paper.

A To my knowledge I have never gotten a piece of paper saying a grant of immunity.

Q But you were told that it wasn't necessary by Mr. Phillips?

A To the best of my memory.

Q When was that, if you can recall in time?

A I think it was in 1973 some time.

Q When did you receive your sentence-- you pled guilty to manslaughter out in Nassau County, did you not?

A That is true.

Q When did you receive your sentence, if yourecall?

A On July 12th, 1973.

Q Was this conversation with Mr. Phillips before or after that date?

A If I had such a conversation with Mr. Phillips, it was before I got sentenced.

Q How long before?

A Like I said, I don't really remember if I did have this conversation with him.

Q Your best recollection is that you did?

A It was in 1973 some time, if I did at all have this

conversation with him.

Q Is your best recollection that you did or that you did not?

A I can't recall -- are you asking me again if I asked Mr. Phillips for a grant of immunity?

Q Yes. Did you?

A I can't remember exactly. I may have but to my best memory right now, I don't remember for sure.

Q Is your best recollection that you did have this conversation or is it that you did not have it? What is the best recollection?

A I think I answered that for you a couple of times.

Q I would like you to answer the specific question I asked you, what is your best recollection?

MR. EDWARDS: I think he answered the question.

THE COURT: Sustained.

Q Mr. Lipsky, prior to July of 1973, Mr.Phillips was an Assistant United States Attorney, was he not?

A He was.

Q This district, the Southern District of New York?

A That is correct.

Q Mr. Lipsky, did you ever meet a James Tripp, Assistant United States Attorney James Tripp?

A How do you spell that, Mr. Duke?

Q T-r-i-p-p.

A Not to my best recollection. I don't remember a James Tripp.

Q Did you ever hear of such a person?

A As I sit here today, I don't remember hearing of James Tripp. I have a pretty good memory and I don't remember James Tripp.

MR. DUKE: May we approach the bench, your Honor?

(Side bar)

MR. DUKE: Your Honor, I have I think completed this line. I was thinking we might have a recess.

I would like to ask the court to order the clerk to disclose to defense counsel the document marked in yellow.

MR. EDWARDS: Could I see this, your Honor?

THE COURT: You were going to suggest a recess at this time. I was about to suggest to you that you let me know along about now when it is a good time.

Let us take a recess right now and perhaps you can discuss this with Mr. Edwards.

(In open court)

THE COURT: Ladies and gentlemen, we will tak a short recess at this time.

(Jury leaves courtroom.)

(Recess)

(In robing room)

MR. WALL: Your Honor, the defendant would like to be present here.

THE COURT: Let me tell you what I have and then you could decide whether it is necessary.

MR. EDWARDS: Since my office prepared it, could I examine it to see if there is any reason I feel they don't know what it is.

THE COURT: I don't intend to show them it. These are orders involved with four persons involved in no way in this case.

MR. DUKE: Your Honor, do we know that is the total document described?

THE COURT: This is what is given to me.

MR. DUKE: Can we see theoutside of it? That is the wrong case.This case is 11.

MR. NESLAND: That is why it is wrong. That is page 11. They must have put t in the wrong file.

THE COURT: Do you want Mr. Pacelli to come in?

MR. WALL: I don't think so.

(In open court, jury present.)

BY MR. DUKE:

Q Mr. Lipsky, you testified on direct, I believe, you had given accurate testimony in two prior cases. Was it

inaccurate or was it a deliberate lie?

A It was inaccurate testimony. I did not deliberately have the intention to lie.

Q Did you have the intention to deceive the juries in those cases concerning what the true facts were?

A I did not.

Q Mr. Lipsky, I ask you in the case tried before Judge Gagliardi in June of 1972 --

MR. EDWARDS: I am sorry, your Honor, in December.

THE COURT: He said the one that was tried in June of 1972.

MR. EDWARDS: I'm sorry, your Honor, my error.

Q Were you asked these questions and did you give these answers.

"Q Do you expect to get any favorable treatment whatsoever?

"A No, sir, I do not.

"Q Nobody has made any promise to you about your coming in here you are going to get a break in some other matter?

"A No, sir.

"Q Do you expect to get any such break because of the fact you are here testifying?

"A No, sir."

Were you asked those questions and did you give

those answers?

A Yes, I did.

THE WITNESS: May I explain, your Honor?

THE COURT: Mr. Duke, the witness asked an opportunity to explain. Do you want him to do so?

Q Pleas explain. I was going to ask you if that was the inaccurate testimony you referred to.

A Yes, Mr. Duke and if I may explain.

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AM 2b

1 rkmch Lipsky-cross

Q Please do. Explain to the jury.

A The lawyer for defendants was asking me about promises or did I expect any favorable help by testifying in the case which Mr. Duke was just asking me about in 1972, and he meant did I expect any favorable help in this courthouse in the case in which I was indicted on, and which I was testifying in against other defendants, co-defendants, who were sitting in the court, and I was under indictment in Nassau County, New York, Long Island, for murder in the first degree, and my answers to the questions of the lawyer were inaccurate as to the fact that no federal prosecutor, anyone connected with the federal government had promised me anything, any help in my matter and my murder indictment in Nassau County, New York, and when I answered the questions of the lawyer, did I expect any help in this case, in this courthouse today, meaning a narcotics case, I had a thing in my mind where all I could think of was that I was under indictment for murder in Nassau County and that is why I answered the questions, "No, I haven't been told that I will receive any help," in Nassau County, when the lawyer was asking me about had I been promised anything in connection with the cases I was testifying in, the case I was testifying in in this courthouse, which was a federal narcotics

offense, and in fact, I had been promised or told that by my testifying and through my testifying, I myself would not be prosecuted for any federal narcotics violation.

Q Did I understand that explanation, Mr. Lipsky, to be that you weren't expecting any help in Nassau County in your murder case?

A When, Mr. Duke?

Q At the time that you said you gave this testimony in June of '72.

What case were you thinking that you weren't getting any help on?

A My murder indictment in Nassau County, Mr. Duke.

Q You knew you were getting help on other problems that you had with the federal government, didn't you?

A Can you be more specific, Mr. Duke?

Q You knew you had a verbal contract of immunity with the Government concerning anything you told them about?

A I just told that to the jury, Mr. Duke.

Q Did you tell them about the murder?

A Did I tell who about the murder?

Q The Government, the Federal Government?

MR. EDWARDS: I don't understand the question,

your Honor.

THE COURT: You don't what?

MR. EDWARDS: The question is, did he tell the Federal Government concerning the murder in Nassau County.

THE COURT: Do you understand the question, Mr. Lipsky?

A If you can be more specific as to when?

THE COURT: Why don't you start over again?

MR. DUKE: I will rephrase it.

Q Had you, prior to June of 1972, told anything to anybody in the federal government about the Parks murder?

A About the facts of the case?

Q Yes.

A To the best of my recollection, no.

Q You hadn't even admitted your involvement in that murder to federal agents?

A Well, going back to the night I was picked up by Nassau County, there were federal people present.

Q And you told them about your involvement in the Parks murder?

A I told a large group of people. Federal narcotics agents may or may not have been in that room when I was

telling people about this murder.

Q Agent John LaPore was there on the night of March 3rd when you were questions in Nassau County, wasn't he?

A At times he was and at times he wasn't.

Q He heard you talk about the Parks murder, didn't he?

A Yes.

Q And you knew he was a federal agent, a law enforcement agent?

A I don't know if I did know that that night, but I found out afterwards.

Q So, as of June of 1972, you knew you had given information concerning the Parks murder to agent or agents of the federal government, did you not?

A In part, Mr. Duke.

Q And you knew that your verbal contract of immunity which you were told about in April, April 11, 1972, included that murder, did it not?

MR. EDWARDS: Objection.

May we approach?

THE COURT: All right.

(At the side bar)

MR. EDWARDS: Your Honor, I am just concerned that

we not create unnecessary confusion.

The witness, of course, was not prosecuted for murder in Nassau County, and needless to say, the Federal Government did not tell him at any time that they were immunizing him against a murder prosecution by the State authorities in Nassau County.

I am afraid the question seems to suggest that that was part of the immunity.

MR. DUKE: Your point is well taken. I will rephrase it. I didn't intend to do that.

THE COURT: All right.

(In open court)

Q Mr. Lipsky, you knew as of June 1972 that no federal charges would be brought against you concerning the Parks murder; didn't you know that?

A I am not sure if I knew that for a fact at that date, Mr. Duke.

Q Do you want this jury to understand, Mr. Lipsky, that in June of 1972, as you sat on the stand under oath, that you didn't know that the Federal Government was going to help you in your Nassau County murder charges?

A I thought through conversations with my attorney that he was going to try and get the Federal Government, meaning this District, United States Attorney's Office,

to speak to the Nassau County authorities on my behalf.

Q And you knew that he had done so?

MR. EDWARDS: That who had done so?

Q You knew --

THE COURT: Overruled. I think he is clear. You mean Mr. Gwinn -- or do you mean Mr. Gwinn?

MR. DUKE: Yes.

Q You knew that Mr. Gwinn had in fact spoken to federal authorities about helping you in your Nassau County murder charges?

A Yes. Mr. Gwinn had spoken to federal authorities about that.

Q And you knew that they had indicated that they were going to help you, didn't you?

A Mr. Gwinn told me that they were going to try and help me, and help me with my murder indictment in Nassau County.

Q So if limiting it to the Nassau County State murder charges, was this question and this answer true or false:

"Q Do you expect to get any favorable treatment whatsoever?

"A No, sir, I do not."

Was that true or false?

A Can you tell me where that was asked and by whom and when?

Q That is what you explained to the jury.

A You are talking about the trial in this courthouse?

Q In June of 1973.

A Right, and the answer, the explanation I just made to the jury, a lengthy explanation a few moments ago, is the true answer to the question and answer that you just put to me.

Q Hadn't Mr. Gwinn told you prior to your testimony in June of 1972 that he was going to meet with the federal people and expected the best possible results from that meeting?

A I don't remember those exact words, Mr. Duke, but Mr. Gwinn did have some meetings with the federal people and told me he was going to try to arrange some meetings and speak to them.

Q Did you tell that to the jury in the 1972 case?

MR. EDWARDS: Objection, your Honor. He wasn't asked.

THE COURT: I will sustain the objection.

He may answer the question.

A Ask me the question again, Mr. Duke.

MR. DUKE: May I ask the reporter read it back?

(Record read)

A I don't remember being asked that question and I don't remember giving an answer to that question in that case.

Q Were the lawyers in that case badgering you?

A I am sorry?

Q Were the lawyers in that case badgering you when they asked those questions?

MR. EDWARDS: Objection.

THE COURT: Sustained.

Q Mr. Lipsky, you, in your explanation to the jury, said that the lawyers got you confused.

A There was one lawyer, as I remember it -- I am sorry, in June of '72?

Q Yes.

A I was confused. They helped me get a little more confused.

Q And you were confused about the question, "Do you expect to get any favorable treatment whatsoever?

A Yes.

I just explained all that, Mr. Duke.

Q I just wondered if your confusion applied to that.

A Applied to what?

Q That question. You didn't understand that question?

A Yes, that is a very simple question.

Q And you didn't understand it? You were confused about what it meant?

A I am sorry, we are getting --

THE COURT: Go ahead, Mr. Lipsky.

A You just asked me, Mr. Duke, did I expect to get any favorable treatment whatsoever.

Q That was the question.

My next question was, were you confused about the meaning of that question?

A I was confused as to my interpretation of "favorable help," and where and in what direction I would be getting any favorable help, if any.

In my mind, as I just explained at length to the jury, I was concerned with the Nassau County murder charge that I was indicted under.

T3A

Q When you said in answer to that question, "No, sir, I do not," did you expect the jury to understand that you had in mind that the Nassau County murder case and nothing else? Did you expect them to --

A No, because that was not what I was being questioned about.

Q Mr. Lipsky, in fact those questions were asked of you by the judge, weren't they?

A I believe so.

Q Did the judge confuse you?

A The judge was clear.

Q The questions the judge asked were clear?

A Yes.

Q Your answers were truthful?

A You have to ask me the questions. I don't remember the question. Now you are asking me to give you an answer to a question which you haven't even put to me.

Q The judge's questions were clear and your answers were forthright and truthful, is that correct?

MR. EDWARDS: Objection, your Honor. This is repetitive. I think he is just explaining he hasn't heard the question.

THE COURT: Overruled.

A Judge Gagliardi's questions to me were very clear.

My answers to Judge Gagliardi were the same that I made, or they had the same -- I gave the judge the same answers thinking the same thing in my mind about what the questions referred to that I did to the defense counsel when defense counsel asked me the questions just previous to the judge asking me the questions.

Q Mr. Lipsky, you asked me to tell you what questions the judge asked you. On page 373, the judge asked you:

"Q Do you expect to get any favorable treatment whatsoever?" And you said, "No, sir, I do not."

The judge then asked you, "Nobody has made any promises to you about your coming in here? You were not going to get a break in some other matter?"

And you answered:

"No, sir."

And the judge asked you, "Do you expect to get any such break because of the fact that you are here testifying And you said, "No, sir."

Did you tell the judge the truth?

A About the question, Mr. Duke, whether I expected to get a break by coming in here and testifying, that was not the truth because I already knew that by sitting and testifying, my lawyer had an agreement with the government that I would not be prosecuted on that narcotics trial.

Q And that was in return for your testifying, was it not?

A I don't know what conversations Mr. Gwinn had with the government, but that is what I think it was in return for, my testifying.

Q The government did not agree not to prosecute you concerning anything that came out of your mouth for any reason other than your willingness to be a witness, did they?

A No, sir.

Q And you were being a witness for the government until this trial in June of 1972, were you not?

A Yes, I was.

Q You were doing what -- you were performing your side of the agreement?

A Yes.

Q And in return for that, the government agreed not to prosecute you concerning anything that you had told them about, right?

A To the best of my understanding.

Q Do you regard that as a break?

A Yes.

Q In that same trial, Mr. Lipsky, were you asked these questions and did you give these answers.

MR. EDWARDS: Could we have the page?

MR. DUKE: 369.

Q "Q Mr. Lipsky, have any promises of any type been made to you from any governmental authority, federal, state, local with respect to your testimony in court today?

"A On this case, sir?

"Q Yes.

"A None whatsoever, sir. Nothing whatsoever has been promised or told to me in any way whatsoever at all."

Were you asked those questions and did you give that testimony in that June, 1972, trial?

A Yes, I did.

May I explain?

Q Was that truthful?

A No, it wasn't.

May I explain?

Q I think you have already explained.

THE COURT: Is it the same explanation you have given before?

THE WITNESS: Yes, your Honor. That I did know that I wasn't going to be prosecuted for any narcotics that I would give out of my mouth to the federal authorities.

THE COURT: Is that an explanation of why it wasn't truthful?

THE WITNESS: The other part of it is my explanation to the jury, that I already knew that I wasn't going to be prosecuted on narcotics violations and my confusion in my mind was about if I was going to receive any help whatsoever from the federal government in relation to my Nassau County murder indictment which I was then under.

Q Mr. Lipsky, in that same trial, June of 1972, did you under oath tell the jury, "I have been told absolutely nothing from the federal prosecutors and the United States Government about this case or any other case"?

A I may have said that, Mr. Duke..

Q Did you say it?

A I think I said that. I am not sure if I said it. Would you show me where I said it if I said it.

Q Page 294.

Did you give that testimony under oath, Mr. Lipsky?

A Yes, I did.

Q Was that true?

A No, that wasn't true.

Q That was a deliberate lie, was it not?

A That's the same thing thatt I just got done, just got done explaining to his Honor and to the jury previously.

lzh6 Lipsky-cross

THE COURT: Can I see counsel for a moment, please?

(At the side bar.)

THE COURT: I am extremely reluctant, Mr. Duke, to cut you off. I am sure Mr. Edwards has the same reluctance, but it does seem to me that we are beginning to beat a dead horse.

MR. EDWARDS: Not only that, your Honor, but Mr. Duke will now begin to pursue the same line on the December, '72, trial and I agree he is entitled to do so. However, it seems to me he ought to take care of it and let's get on with the case.

THE COURT: I am not going to prevent you from going into whatever you need to go into, but it does seem to me that it is possible that you made your point emphatically several times and obviously there has to be an end to this.

I am disposed to let you do whatever you think you have to do but --

MR. DUKE: I am prepared to move on to the second trial.

THE COURT: All right.

MR. EDWARDS: I would simply ask if we couldn't move through the second trial a little faster because it is just the same business.

MR. DUKE: If he tells the truth, we will be through in a few minutes.

THE COURT: All right.

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AM 3b

(In open court)

Q Mr. Lipsky, with respect to the December 1972 trial, you were named a defendant in that case, isn't that correct?

A I believe so.

Q At that time did you expect to have that charge dismissed? You weren't actually on trial as a defendant, were you?

A No.

Q You were a witness?

A That is correct.

Q Did you expect, as you sat there on the stand testifying, that the charges against you in that case would be dismissed?

A I think my attorney told me something to that effect.

Q He told you back in April of '72, didn't he? He explained to you that after you testified the charges would be dismissed?

A I don't know if he used those words, but he told me as I just told you before, that whatever information I would tell the federal people about narcotics would not be used against me, and I wouldn't be prosecuted for such.

Q You understood that to mean eventually the charges would be dismissed, didn't you?

A Yes.

Q Did you testify in that trial as follows? Page 52:

"Q Do you expect to have the charge against you dismissed?

"A This charge?

"Q Yes.

"A I do not know whether it will be dismissed or not dismissed, sir."

Were you asked those questions and did you give those answers?

A I think I was asked those questions and made those answers.

Q Were you also asked these questions and did you give these answers? Page 53:

"Q With respect to the charges here today, that is, this case where you are a defendant, has anybody in the U. S. Attorney's Office made any promises to you about what might happen if you testified?

"A No, sir.

"Q No promises have been made to you?

"A Promises, sir?

"Q Yes.

"A I mean I don't know exactly what you mean by 'promises.'

"Q A promise that you would not be prosecuted for the subject matter to which you testified.

"A I can answer that best by saying --

"Q I would like to have a yes or no answer.

"A Can I hear the question again?

"Q The question is, did anybody say to you, Mr. Lipsky, did anybody say to you, in words or substance, 'Mr. Lipsky, if you testify in this case, why nothing is going to happen to you; you are going to be okay'?

"A No one has ever said exactly that to me, sir."

Were you asked those questions and did you give those answers, Mr. Lipsky?

A Yes, I did, Mr. Duke.

Q Were you asked these questions and did you give these answers? Page 54:

"Q Has Mr. Feffer ever made any promises to you that if you testified, you would not be prosecuted, that you would nto go to trial, you would not have to plead guilty in respect to that which you testified about?

"A I don't quite understand exactly what you are saying to me.

"Q Did Mr. Feffer every say to you, 'You have a deal, Mr. Lipsky; if you testify, we are not going to prosecute you'?

"A I have never been told by anybody in the United States Attorney's Office that I have a deal.

"Q Do you know if your attorney has been told by anybody that you have a deal?

"A No. I do not know if my attorney has been told that.

"Q Your attorney is Mr. Walter Gwinn of Miami, Florida?

"A That's correct.

"Q Did Mr. Feffer ever say to you that you would receive very favorable treatment if you testified here today?

"A He never said that in those words.

"Q Do you know if Mr. Feffer ever said to you or to your attorney, Mr. Gwinn, in Miami, that while you would be indicted in this case, that your case would be severed and that you would never be tried, that you would never go to trial?

"A No, sir, I have no knowledge of any conversations of that type."

Were you asked those questions and did you give

those answers?

A I was asked those questions and I made those answers,and could I explain?

Q I am not through yet.

A Sorry.

Q Were you asked these questions and did you give these answers:

"Q Were you ever told by your attorney, Mr. Gwinn, in the presence of Mr. Feffer that there was a verbal contract between the Government and your lawyer that you would never be tried?

"A No, sir.

"Q Were you ever told by Mr. Feffer or was your lawyer, Mr. Gwinn, ever told that the Government, the United States Government, intended only to use you as a witness and that you would never be a defendant in their eyes?

"A I was never told that, sir.

"Q By Mr. Feffer or anybody else?

"A I was never told that.

"Q Were you ever told by Mr. Feffer or anybody else that, in effect, you had transactional immunity?

"A I never heard those words until now, sir."

Were you asked those questions and did you give

those answers?

A Yes, I did.

May I explain?

Q You can explain on redirect.

That testimony was false, was it not, Mr. Lipsky, the testimony that in the second trial that I just read to you, that was false testimony, wasn't it?

A That's correct.

Q Mr. Lipsky, do you know what perjury is?

A Yes, I do.

Q Do you know that's a crime against the United States, to commit perjury in a federal court?

A Yes, I do.

Q Do you know it's a crime against the United States to commit perjury in a grand jury?

A Yes.

Q Do you know it's a crime against the United States to tell a lie to an FBI agent?

A I didn't know that, but I assumed it's a lie -- a perjury.

THE COURT: I think there may be a question of law about that, but that's all right.

THE WITNESS: I don't know the answer. I don't know about FBI agents.

Q You assumed that it's against the law to lie to FBI agents concerning when they are investigating a crime?

A I assumed so.

Q You assumed so when you lied to them back in 1970?

A Do you mean was I not telling them the truth, is that what --

Q No. I understood you to say you lied to them. At that time you assumed that that was a criminal offense of some sort, didn't you, to lie to them, to the FBI concerning the stolen stock?

A I lied to them, yes. But I didn't think much about the criminal offense part of it.

Q You were trying to avoid being caught for selling the stolen stock, were you?

A Correct.

Q Were you ever prosecuted for perjury?

A No.

Q Were you ever prosecuted for making false statements to the FBI?

A No.

Q Were you ever prosecuted by the Federal Government for your implication in the murder of Patsy Parks?

A No.

Q Were you ever prosecuted for tax evasion?

A No.

Q Were you ever charged with forgery of bank checks?

A No.

Q Were you ever charged with -- were you ever prosecuted for narcotics by the Federal Government?

A No.

Q In fact, as you sit here today, you have not been prosecuted for any federal offense other than the stolen stock case in Florida?

A That's correct.

Q For which you received probation?

A That's correct.

And the probation was violated.

Q Mr. Lipsky, did Mr. Gwinn tell you before the June, 1972, trial that you should be able to say on the stand if asked that the government has made no deals with you?

A Do you mean did Mr. Gwinn tell me to say that on the stand?

Q Did he say that you should be able to say that?

A What do you mean by able to say that. Are you saying did Mr. Gwinn instruct me to say that?

Q Did he advise you to say that the government has never told you anything when you testified?

A Will you repeat that, please?

Q Did Mr. Gwinn tell you that you should say the government has never told you anything when you testified?

A Mr. Gwinn never came out and told me to say that the government has never promised me anything. What Mr. Gwinn did say is that he thought that it would be handled in a different way in the letter which you just recently showed me.

Q How would it be handled? How did he tell you it would be handled?

A He thought I would be a witness and not a defendant.

Q Did he say what you would be able to say?

Let me show you Defendant's Exhibit D.

THE COURT: I take it you are showing him that just to refresh his recollection?

MR. DUKE: Yes.

A Yes. Mr. Gwinn saying in a letter to me --

THE COURT: Don't tell us what the letter said. Tell us what his recollection is after you read that letter.

Does the letter refresh your recollection as to what Mr. Gwinn said to you?

THE WITNESS: Yes.

THE COURT: What did he say to you?

THE WITNESS: That he thought it would be handled in a different way. That he believed that the government didn't want me to know that I was not going to be prosecuted and that I would be in effect not a defendant but a witness in his letter there, he said he believed it and he was my lawyer.

Q Did you believe him?

A Yes, I believed Mr. Gwinn.

Q Did you understand that to mean that you should get on the stand two weeks later and deny any deal or understanding with the government?

A No, that is not the reason that I said what I did.

Q That is not the question, either.

The question is, did you understand Mr. Gwinn

to be advising you that that is what you should do.

A No.

Q Did you understand him to be advising you that that is what he thought the government wanted you to do?

A That is what he believed. He said so in his letter.

Q That is what you understood him to be saying to you?

A That is what I understood his letter to be to me.

Q And that is what you did?

A What?

Q Denied that there was any understanding whatsoever?

A That is correct.

THE COURT Is this a good time to break for lunch?

MR. DUKE: Yes, it is, your Honor.

THE COURT: Ladies and gentlemen, you will remember my admonition. You may not talk among yourselves or with anybody else. Remember my admonition about newspapers, radio and television. You may not pay any attentioon or look at newspapers or radio and television.

We will adjourn until 2 o'clock.

(Luncheon recess)

AFTERNOON SESSION

2:00 p.m.

(In the robing room)

THE COURT: I am told by Mrs. Gold that you asked me, Mr. Edwards, something that I completely missed, to charge the jury on the point about his testimony that he wasn't lying when he said what he said about -- the usual formal recitation that anything he said could be used against him.

MR. EDWARDS: Your Honor, I think at this time it's probably unnecessary. However, we probably will submit a request to charge on that at the end of the case on what the law is there, and request that you charge it. I don't think there is any need to attend to it now.

MR. WALL: We take the position it's up to the jury to decide whether he was trying to deceive or wasn't.

THE COURT: I think that is obviously up to the jury, but I think there is a question of law here.

Anyway, I take it Mr. Edwards doesn't want me to do anything now and wants to wait until we get to the charge.

MR. EDWARDS: Yes, your Honor.

I have one request. There are some people in the courtroom, I believe the aunt and uncle of Pacelli, and

also perhaps his sister, Loretta Pacelli, is in the courtroom. If they are going to be called to testify by the defendant, I ask they be sent out of the courtroom.

THE COURT: I think Mr. Duke and Mr. Wall know my views on that. If they are going to testify, they shouldn't be in the courtroom.

MR. DUKE: We have no plans to call any of those people.

THE COURT: One other thing I had in mind, and I am not quite sure whether you asked me to do anything on this, Mr. Edwards. I think we talked about it at the side bar, the question of whether or not a federal prosecutor can do anything about immunity in a State court proceeding.

MR. EDWARDS: I think there is no need for anything now on that, your Honor.

THE COURT: All right. Let's leave it, then.

I am interested, as I mentioned briefly in the courtroom a little while ago, about getting your requests to charge as soon as it's convenient for you. I think there are some problems here that I am going to want to focus on for more than a moment or two.

I think it's likely I will start with Judge Tenney's charge and go on from there. I may decide that

it doesn't fit this situation at all. I may feel, as I am inclined to feel at the moment, that it continues to fit this situation with some changes, which are obvious, because of the Court of Appeals' decision.

I just thought perhaps you ought to have that in mind.

MR. EDWARDS: Yes.

THE COURT: There is no point in your telling me you want me to charge what Judge Tenney charged in detail.

MR. EDWARDS: Perhaps we will simply suggest various changes and supplements.

THE COURT: Do whatever you think is appropriate.

(In open court; jury present)

B A R R Y G. L I P S K Y, resumed.

THE COURT: You may proceed, Mr. Duke.

CONTINUED CROSS-EXAMINATION

BY MR. DUKE:

Q Mr. Lipsky, approximately when did you employ the services of Mr. Gwinn to represent you in connection with the homicide case in Nassau County?

A Shortly after I was arrested in Nassau County.

Q Was it the month of March?

A I think so, yes.

Q 1972?

A I believe so.

Q Did he represent you in those proceedings up through the end of 1973?

A He represented me in those proceedings until I got sentenced, when he said his services were going to be terminated.

Q When were you sentenced?

A July 12, 1973.

Q During the period that he represented you in that connection, did he correspond with various State officials on your behalf? That is, did he write letters to various State officials on your behalf?

A I believe he did.

Q And various federal officials?

A I believe he did.

Q Was that done with your authority, as your attorney?

A He was my attorney. I didn't tell him each letter to write, but he did as he thought was best and wrote to whom he thought was apropos. I didn't tell him each letter to write, but he did as he thought was best and wrote to whom he thought was apropos.

Q And he had authority to do what he thought was appropriate?

A Yes, he did.

Q Likewise, were certain motions made by Mr. Gwinn in the Nassau County murder proceedings, certain motions?

A Motions made?

Q Yes.

A Yes, there were motions made.

Q Was one of those motions a motion to suppress the statements that you made on March 2nd and 3rd to Nassau County?

A That is right.

Q Was another one a motion for the Court to appoint a psychiatrist and have you examined?

A I think so.

Q Was that motion to have the psychiatrist examine you to determine whether you were mentally competent to stand trial?

A I think so.

Q Did Mr. Gwinn have the authority to file that motion?

A Yes.

Q Did he have your authority to prepare an affidavit in support thereof?

A I don't know what that means.

Q Do you know that he submitted an affidavit in support of his motion to the Court to appoint a psychiatrist to examine you?

A As you said, he put in a motion to the judge that I be examined. I don't know anything about an affidavit.

Q Were you examined by two psychiatrists?

A Yes.

Q When?

A I think it was December 26, 1972, the day after Christmas.

MR. DUKE: Would you mark this, please?

xxx (Defendant's Exhibit E was marked for identification.)

Q I show you Exhibit E, Mr. Lipsky. Have you ever seen that before?

Have you seen it before?

A I don't remember seeing this.

Q Do you have any reason to doubt, Mr. Lipsky, that this Exhibit E was an affidavit filed on your behalf by Mr. Gwinn?

MR. EDWARDS: Objection, your Honor, it's not relevant.

THE COURT: Sustained.

Q Mr. Lipsky, you say you don't know anything about Mr. Gwinn filing an affidavit concerning your mental competency?

A I didn't say that. I said I didn't remember seeing that paper that you just handed me.

Q Prior to that, you said you didn't know anything about an affidavit.

A If I said that, I was wrong, because I remember Mr. Gwinn told me he was going to try to have the Court order me to be examined.

Q And you agreed to that procedure?

A As I told you, Mr. Gwinn was running the show. He was my attorney. Whatever he thought best, he knew more than me.

MR. DUKE: May we approach the side bar?

(At the side bar)

MR. DUKE: Your Honor, if the objection was sustained on the ground that nothing Mr. Gwinn says is admissible against Lipsky --

THE COURT: I sustained the objection not necessarily on the grounds that Mr. Edwards pointed out, but your question started "Have you any reason to doubt," which doesn't get us very far.

MR. DUKE: I think we are really not in dispute

about the fact.

THE COURT: If this was in fact filed, it seems to me there is an easier way of getting it out.

MR. EDWARDS: Your Honor, the fundamental issue hre is I think, if I read what Mr. Duke is attempting to do, he intends to put this affidavit in evidence. It's a hearsay affidavit written by this man's lawyer for obvious purposes, and it's not admissible anyway.

THE COURT: I don't know whether it's admissible, but I think the question of whether this witness went through a psychiatric examination and what the results of that examination were goes to his credibility.

MR. DUKE: Your Honor, I am getting to that later.

My contention is this affidavit or any portion thereof, which was done with full authority of Mr. Lipsky is plainly admissible to prove the truth of what was in it so far as it impeaches Mr. Lipsky.

MR. EDWARDS: I want to emphasize a couple of simple things on that.

Mr. Lipsky testified he had never seen that affidavit.

Number two, he testified although he knew that Gwinn was filing some kind of motion to try to get him

examined, he didn't know anything specific about an affidavit.

This is an attempt to put in evidence a hearsay affidavit from an attorney without opportunity to cross-examine that attorney. Furthermore, not only is it hearsay, it's an interpretation of an attorney's opinion, which are also inadmissible and incompetent.

Also, the outrageousness of any attempt to offer this affidavit. All lawyers can very well see what the situation was. Lipsky was out there faced with a first-degree murder charge in Nassau, which refused to reduce it, and one can reasonably assume a defense attorney would have a great interest in trying to show if he could Lipsky was unable to stand trial. The psychiatrist examined him and concluded in a legal sense nothing was the matter with him.

In any event, that affidavit would be an outrageously piece of hearsay.

MR. O'DONNELL: You are not saying Mr. Gwinn misrepresented anything in that affidavit, are you?

MR. EDWARDS: I don't think I have to respond.

MR. DUKE: This is the act of the agent of this witness and it's admissible as if it was the statement of this witness, and looking at it in that regard, it

unquestionably has nothing to do with the hearsay rule. It's under a clear exception.

These are assertion of facts.

THE COURT: It doesn't make them facts, of course.

MR. DUKE: They are statements of Lipsky through his agent that they are facts.

MR. EDWARDS: The evidence is that Lipsky did not know about that affidavit and did not authorize any of the statements contained therein.

T1B

THE COURT: My view at the moment is that the affidavit itself cannot be received in evidence. On the other hand, it seems to me, Mr. Duke, that you can cross-examine him about whether or not the assertion in here-- well, you can cross-examine him about the assertions.

MR. DUKE: Am I entitled to read the assertions in here?

MR. EDWARDS: He is not entitled to read from papers not in evidence.

THE COURT: I don't think you can read it to him. You can show it to him. It is marked for identification. Ask him to read it and then ask --

MR. EDWARDS: Your Honor, can I suggest this. If there are any factual assertions in there--

THE COURT: There are.

MR. EDWARDS: Bear with me if you please for a moment.

As to any factual assertion in there such as Lipsky bangs his head on the wall or shoots out television sets or something, the proper line of inquiry from Mr. Duke is to ask Lipsky if he ever shot out a television set and he will say he did. There is no need to refresh his recollection by showing him any paper about that.

MR. DUKE: I am offering it in evidence.

MR. EDWARDS: His recollection does not need to be refreshed. All he has to do is ask him, that is what he is required to do.

THE COURT: Suppose he says he doesn't remember.

MR. EDWARDS: I don't think he will say that. If he says "I don't remember" then he could refresh his recollection.

MR. DUKE: There are things in here he will deny.

MR. EDWARDS: Then you can refresh his recollection.

MR. DUKE: I am entitled to prove the truth of them through this document.

THE COURT: At the moment we will proceed this way. You will ask Lipsky the questions you want to ask him revolving around the assertions in this affidavit without showing him the affidavit. After you have asked him these questions if you are dissatisfied with his answers, then you can show him the affidavit to refresh his recollection.

I would not suppose that this would lead to the conclusion that we could put the affidavit in evidence.

MR. DUKE: Your Honor, along that line and while we are up here, I have numerous documents that were written by Mr. Gwinn in an effort to represent this man and to get him the best possible results he could which he says this

man is mentally disturbed, he is fading fast.

THE COURT: I understand you do.

MR. DUKE: I think they are all admissible.

THE COURT: Perhaps they all are. I would doubt that. I would wonder, for example, why that one or all of them necessarily if they all go to the same point then I am not even sure that any of them are admissible -- let's go ahead with this one and see where we are.

(In open court.)

Q Mr. Lipsky, did you ever take a loaded pistol and shoot out the screen of a television set?

A Yes.

Q When was that?

A I don't remember the year. Back in 1967, 1968. I don't remember the year.

Q Did you do that to silence the announcer from criticizing a football player that you admired?

A That is wrong.

Q Is that a lie?

A Yes, that is a lie, yes.

Q Did you tell Mr. Gwinn that is the reason that you shot out the TV set?

A I don't remember if I told Mr. Gwinn that or not, but that is not the reason that I shot the television set.

Q You might have told that to Mr. Gwinn?

A It is possible Mr. Gwinn has that recollection of it. That is not why it happened.

Q My question is, did you tell Mr. Gwinn that is the reason?

A I don't remember.

Q You may have told him that?

A I might have told him that.

Q If you did, that was a lie?

A That is not what happened. That is not the reason.

Q On the occasion you threw two scales in the Atlantic Ocean because you didn't like what they said about your weight--

b2 A It wasn't the Atlantic Ocean.

Q What was it?

A Biscayne Bay.

Q Was that the reason you threw them in Biscayne Bay?

A I was on a diet. I wasn't losing weight quick enough, and I jumped up and down on the scales and broke them and my sister said why don't you throw them off the dock and I threw them off the dock.

Q Two of them?

A I think there were two of them.

Q Were you angry at that time?

A I was angry because I wasn't losing the weight.

Q Were you angry at the scales?

A I was angry that I wasn't losing weight so I guess I was angry at an inanimate object, the scales.

Q You blamed the scales for your not losing weight?

A I guess you could put it that way.

Q Did there come a time, Mr. Lipsky, when you held a loaded gun to your brother's head?

A As I remember, it wasn't loaded.

Q Is your memory unclear as to whether it was loaded or unloaded?

A I recall it wasn't loaded.

Q Did your brother know whether it was loaded or not?

MR. EDWARDS: Objection.

THE COURT: Sustained.

Q When did that happen, Mr. Lipsky?

A I don't remember the period. It was about the same time as the television incident.

Q Why did you hold a gun to your brother's head?

A My brother and I had an argument over something and we slept in the same bedroom and he jumped on me and we were fighting and my brother is younger and smaller than I am but he is strong and he grabbed me and I remember I had the gun and I picked up the gun and put it up by his

head and a friend of mine picked up my brother off the floor and put him out of the room.

Q This was a pistol?

A Correct.

Q Yours?

A Yes.

Q About what year was this, if you can place it?

A I can't place it exactly. 1967, '68, '69. I think. I am not sure of the year.

Q It was about that same period that you threw the scales in Biscayne Bay?

A It may have been. I am not sure of the year.

Q Did you consult a psychiatrist around the same period of time?

A I went to see a psychiatrist at one time at the urging of my mother.

Q Was that before or after you held the gun to your brother's head?

A I don't remember which came first.

Q Do you remember if it was before or after you threw the scales in the bay?

A I do not remember chronologically what took place first.

Q When did you shoot the TV set?

A I just got done telling you I don't remember the year.

Q Approximately?

A To the best of my memory, 1967, 1968 or 1969. I am just not sure.

Q Why did you shoot the TV set?

A Because the picture kept rolling. It wouldn't stay still. It kept rolling.

Q And you got angry at it?

A Yes. I tried to fix it with the controls and it wouldn't stop.

Q How many times did you shoot it?

A I think twice. I think.

Q Was anyone present in the room at this time?

A My brother was in the house. I don't know if he was in the room. He ran to get his camera to take a picture of it.

Q Is that the same brother who you held a gun to?

A Yes.

Q Did you hold a gun to your brother's head before or after you shot the TV set?

A I think you just asked me that. I don't remember which came first.

Q Did you throw the TV set in the bay?

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A I did not.

Q Do you have a lot of temper tantrums, Mr. Lipsky?

A Now?

Q Yes.

A No.

Q Did you in 1968, 1969 and 1970?

A I used to get angry at inanimate objects and sometimes have a temper tantrum, yes.

Q Could you describe some other temper tantrums that you had when you were angry at inanimate objects in '68, '69 and '70?

A I can't recall any off the top of my head as I sit here right now.

Q Are you a violent man, Mr. Lipsky?

A I don't believe so.

Q You consulted a psychiatrist in 1967, '68 and '69, is that correct?

A You say consulted a psychiatrist. I went to a psychiatrist at the urging of my mother.

Q What happened?

A The psychiatrist was in Fort Lauderdale.

Q Was that in '67, '68 or '69?

A I think so. I am not sure of the year.

Q What happened when you went to see the psychiatrist?

A What do you mean what happened?

Q Did you go see him once or twice?

A Twice as I recall.

Q What did you say to him, what did he say to you?

A It is quite a long time ago to remember but he talked to me and I felt I had nothing to talk to him about. I didn't trust psychiatrists. He had a beard and mustache and I didn't think must of psychiatrists anyway. I only went to do my mother-- to make her feel better.

T2A

Q Did it make her feel better that you went--

MR. EDWARDS: Objection, your Honor.

THE COURT: Sustained.

Q Did you tell him that the psychiatrist was stupid?

A I don't remember what --

MR. EDWARDS: Objection, your Honor.

THE COURT: Sustained.

Q With respect to your examination in December of 1972, did the court order the examination?

A I don't know. I think so.

MR. EDWARDS: We will stipulate, your Honor.The answer is yes.

THE COURT: All right, thank you.

Q Mr. Lipsky, prior to that did your attorney, Mr. Gwinn, write a letter to Warden Flood and describe your mental condition to him?

MR. EDWARDS: Objection, your Honor, on relevance and on inadmissible hearsay.

THE COURT: I do not think you have a foundation for this, Mr. Duke.

I sustain the objection.

Q Mr. Lipsky, did you ask your attorney to write to the warden and try to change the facilities that you were kept in in the Nassau County jail, the conditions?

A I recall asking Mr. Gwinn to speak to somebody. I do not asked if I asked him to write to the warden. I asked him to see if he could do something about getting me some better living conditions in Nassau County jail.

Q You were incarcerated in Nassau County jail from early March, '72, until when?

A I can tell you the dates if you like.

Q I am asking you.

A From March 3, 1972, to February 23, 1973, approximately 51 weeks.

Q During the first six months of your incarceration, did your mental condition in your opinion deteriorate rapidly?

A It wasn't getting any better the way I was being kept.

Q Was that the reason that you asked Mr. Gwinn to change the conditions, was it because your mental condition was deteriorating?

A That among other things which were the type of living conditions and the noise and sanitary conditions I was locked in under.

Q Did you write your mother a letter in April of 1972, Mr. Lipsky?

THE COURT: Yes, go ahead.

Q Did you write her a letter?

A I think I wrote my mother. I wrote her a lot of letters. I think I wrote her a letter in April, '72.

Q Did you tell her that your mental state was deteriorating rapidly?

A I may have.

Q Did you tell her that your violent temper was, you were sure that your violent temper would get you in a lot of trouble in the jail?

A Did I tell her that my temper would get me in a lot of trouble in the jail?

Q Yes.

A I may have said that.

Q Did you tell her that you were in the midst of a group of mentally inferior persons, both guards and prisoners?

A I may have said that also.

Q Did you say that?

A I don't remember exactly if I said that. I could have said that.

MR. DUKE: May I show it to him without being marked, your Honor?

THE COURT: We will deem it marked. What is the next letter?

MR. WALL: Exhibit F.

THE COURT: We will deem it marked Defendant's Exhibit F for identification.

(Defendant's Exhibit F deemed marked for identification.)

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Q Would you look at this?

A I understand.

Q You did tell your mother that your mental state was deteriorating rapidly?

A I wrote that, yes. I have answered you four times now on this.

Q Did you tell her that your troubles were insurmountable?

A Yes.

Q Did you tell her that you were convinced that you would never have another good day as long as you lived?

A Yes.

Q Did you tell her that you were very sure that your violent temper would get you in a lot of trouble?

MR. EDWARDS: Objection, your Honor. We have covered that.

THE COURT: Overruled.

Q Would get you in a lot of trouble because you were in the midst of a group of mentally inferior persons,

both guards and prisoners?

A Yes.

Q Is that the way you felt--

A That the guards and prisoners were inferior?

Q Yes.

A Yes. They were.

Q Morally as well as mentally?

A Morally?

Q Yes.

A I don't know what you mean by moraliy.

Q In response to your requests and your complaints to Mr. Gwinn, did you write a letter to the warden and ask to have the conditions, your conditions changed?

A I don't know if he did. I think he did.

Q Did he tell the warden in that letter --

MR. EDWARDS: Objection, your Honor. It is not in evidence.

THE COURT: Sustained.

Q Mr. Lipsky, in May of 1972 did you have any control over the way you wake up and the way you feel?

MR. EDWARDS: Objection, your Honor.

THE COURT: I'm not quite in May, 1972, it is something that is particularly pertinent, but I will allow this.

A The question, please.

Q Did you have any control over the way you wake up or the way you feel?

THE COURT: I think, Mr. Duke, I am not quite sure the way it means, the way you feel.

Can you rephrase it?

MR. DUKE: Perhaps, your Honor, Mr. Lipsky knows what it means.

THE COURT: I am not sure he does. I don't know what it means. I would like to have you rephase it.

Q Were you in a poor mental state in May of 1972?

A I was aggravated. I was annoyed and I was awake most of the time.

Q Did you feel that you had no control over your own emotions at that time?

MR. EDWARDS: Objection, your Honor, on relevance.

THE COURT: Yes. I think I will sustain that objection.

MR. DUKE: May we be heard at the side bar, your Honor?

MR. EDWARDS: Your Honor, I submit there is no necessity for it.

THE COURT: I do not think so at this time, Mr. Duke. I am not sustaining Mr. Edwards' objection totally

on the grounds of relevancy. It seems to me your questions are at least as a matter of form, difficult.

Q Mr. Lipsky, did youwrite a letter to your mother in May of 1972?

A Didn't you just ask me that question?

Q I asked you about April.

A I think I also wrote-- I wrote my mother a lot of letters. I wrote her, I believe, in May of '72.

Q Did you tell her in that letter that there were periods when you found yourself in a poor mental state?

MR. EDWARDS: Objection, your Honor, it is on relevance, your Honor. I submit we should move to something else.

THE COURT: You submit what?

MR. EDWARDS: That he should move on to something else, your Honor. I submit there is no relevance in this.

MR. DUKE: Your Honor, I object to the prosecutor's speech in the presence of the jury. I ask that he be admonished.

THE COURT: Let's not have anybody making speeches.

b2 I will overrule the objection.

Do you remember the question?

A No, I don't.

Q In that letter you wrote your mother in May, '72,

did you tell her therewere periods when you found yourself in a poor mental state?

A Would you mind showing me the letter you are referring to?

MR. DUKE: Would you mark this for identification, please?

MX (Defendant's Exhibit G marked for identification.)

A Which part do you want me to read?

Q This part.

A Yes, I recognize the letter.

Q What if anything did you tell your mother about your mental state in that letter?

A That there is periods during the day when I find myself in a fair state of mind and sometimes periods of the day when I am in a poor state of mind.

Q Did you tell her something about having a lack of control?

A Lack of control?

No, it says here, I wrote, I have no control over the way I wake up and feel, meaning when I wake up how I feel, when I wake up.

Q Did you write a letter to your attorney, Mr. Gwinn, in May '72, Mr. Lipsky?

A I don't know. You have to show me the letter you refer to, Mr. Duke.

MR. EDWARDS: Your Honor, before he shows it to him, can we have an offer of proof and what this one is? On what this is and what the relevance of it is?

THE COURT: Yes.

(At the side bar)

MR. EDWARDS: Your Honor, I would just like to make the following observation, if I may. I can understand the relevance of Lipsky's state of mind now as he is testifying. I can understand the relevance of Lipsky's state of mind on various occasions in the past when he has made statements concerning the murder and Pacelli.

The period that's being inquired into now is a substantial period of time after his original confession, a very substantial period of time before his testimony and trial.

I also must advise the Court that during the 36 months or so that Lipsky has been incarcerated, I suppose he wrote letters every week to one person or another.

I respectfully submit that this line of cross-

examination is totally unnecessary, is simply consuming and wasting time, and is involving questions that either are totally irrelevant or which bear upon matters that can be adequately covered through pertinent questions.

I made no objection to him being asked whether he threw scales in the water, and so forth. We can be here ad infinitum on this.

THE COURT: What about this, Mr. Duke?

MR. DUKE: Your Honor, I am offering this whole line of examination in an effort to prove that Lipsky is crazy as he sits there on the stand, and was crazy on February 4th of 1972, and for a substantial period before that and for all the period in between, and obviously the way he felt, what was going on in his mind during this period and,as far as that goes, when he was in high school, if I have evidence on it, it's evidence of this man's mental condition as he sits there as a witness in this case --

MR. EDWARDS: Your Honor --

MR. DUKE: May I finish, please?

MR. EDWARDS: Yes.

MR. DUKE: That's number one.

I think the jury is entitled to hear any evidence, including this man's opinion about his own mental

condition, and, furthermore, I have a psychiatrist who is going to testify based on what this man says, and other evidence concerning the things that this man has done, the particular things he has done, the particular things he said to people, including his lawyer, his mother, his sister, all of which I intend to pull together, both in argument and in psychiatric testimony that this man is pathological as he sits there on the stand.

It's essential foundation testimony.

THE COURT: Is it important, Mr. Duke, that you spell all of this out day by day?

MR. DUKE: Your Honor, I don't have that many letters. I don't have that --

THE COURT: How many do you have?

MR. DUKE: That are relevant to this particular thing, four or five or maybe six, including letters to his attorney.

THE COURT: His state of mind in May 1972, is that important today?

MR. DUKE: Yes, to the extent it shows that he was psychotic. A psychotic rarely recovers.

MR. EDWARDS: Your Honor, may I state very briefly --

THE COURT: No.

MR. DUKE: I think I can show he is psychotic right now.

MR. EDWARDS: Your Honor --

THE COURT: You can't show me that. I need some expert testimony.

MR. DUKE: You will get it if I have the foundation for it.

MR. EDWARDS: Number one, your Honor, these passagews that he is reading from these letters have no logical tendency whatsoever to show that anybody is psychotic. I personally have no control over how I feel when I wake up in the morning, and I am unaware of any human being who does, unless perhaps some person who is an expert at self-hypnosis. It seems to me this is preposterous.

I have no objection to Mr. Duke engaging in some sort of pertinent and relevant and to-the-point examination on Lipsky's mental condition, but this is simply an endless series of, as I say, either totally irrelevant matters or matters they are so incredibly marginally irrelevant they ought to be excluded, inasmuch as there is plenty of relevant and proper evidence for him to work with.

I request that he be asked to work with what he

really has, instead of this material which I think can be fairly characterized as nonsense.

MR. DUKE: Your Honor, I think Mr. Edwards' remark is totally frivolous. I think I am entitled to cross-examine this man. I think I am entitled to get evidence of his mental abnormality out, and I will represent to your Honor that I have been in close touch with a psychiatrist. I have asked some of these questions -- in fact, all of them -- in consultation with him. He thinks they are relevant to his psychiatric opinion.

Obviously, the jury considers them relevant or Mr. Edwards wouldn't be making this fuss. And, furthermore --

THE COURT: I don't know whether Mr. Edwards is making the fuss. I don't know what reason he is making the fuss. I am getting concerned about the length of time you are taking on matters that I'm not sure are getting us anywhere.

MR. DUKE: Your Honor, if I could simply get in the relevant statements in Gwinn's letters --

THE COURT: You can use those with the psychiatrist, I suppose.

MR. DUKE: But they will be criticized because

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they weren't in evidence.

MR. EDWARDS: Your Honor, I wish to make it emphatic that our position is he is not entitled to make use of material in Mr. Walter Gwinn's correspondence concerning Mr. Walter Gwinn's opinion of Mr. Lipsky's mental state. It's not just that Gwinn isn't here to testify and it's hearsay; it's just that Mr. Gwinn's opinions on these matters are irrelevant.

THE COURT: Of course you are entitled, Mr. Duke, to cross-examine to show that he is mentally incompetent or psychotic or whatever.

It seems to me that this line of questioning is going to become unfruitful quite quickly. You have established what you have established, and if there is just more of the same, I am not sure I am going to allow much more of it.

MR. DUKE: Your Honor, there isn't a great deal more of it.

THE COURT: Well, we will finish with this letter and we will see where we go from here.

(In open court)

MR. DUKE: Would you mark these, please?

(Defendant's Exhibit H was marked for identification.)

xxx

xx

(Defendant's Exhibit I was marked for identification.)

Q Mr. Lipsky, showing you Exhibit H, is that a letter, part of a letter you wrote to Mr. Gwinn?

THE COURT: Is this a new letter?

MR. DUKE: This is one I referred to earlier, your Honor. I asked him about it and he asked me if he could see it.

A I wrote this to Mr. Gwinn.

Q Did you tell him that you had --

MR. EDWARDS: Pardon me.

Could I see this, your Honor?

Your Honor, prior to reading any part of the contents of this, I would appreciate seeing the remainder of the letter. We seem to have two opening paragraphs here.

MR. DUKE: You have the letter.

Your Honor -- if I could have it back, Mr. Edwards, maybe I could get the rest of the letter.

Q Mr. Lipsky --

MR. EDWARDS: I am sorry, your Honor. I prefer to examine it before any part of the contents are read. It's not in evidence.

MR. DUKE: I am moving on to something else for

the moment.

Q I am showing you Defendant's Exhibit I for identification.

Do you recognize that?

A Yeah, I recognize the letter.

Q Is that a letter you wrote to your sister?

A Yes.

If you are going to ask me questions about it, may I refer to it?

THE COURT: No, let's wait and see.

MR. DUKE: Your Honor, I'm going to offer this letter into evidence.

MR. EDWARDS: May I see it?

No objection, your Honor.

xxx (Defendant's Exhibit I for identification was received in evidence.)

THE COURT: May I see it, please?

Q Mr. Lipsky, would you read this to the jury, please?

A Read the whole letter to the jury?

Q Yes.

MR. EDWARDS: I don't see the necessity of the witness reading it. I will be happy to have the defense attorney read it. It's in evidence.

THE COURT: I agree.

MR. DUKE: This letter is dated Wednesday, July 26, 1972, addressed to Mrs. Barry Epstein, 1140 99th Street, BHI, M.B., Florida.

"Carole -- I got your letter and you were correct in everything you said. I read it many times and duly noted exactly what your meaning was. Just finished a nice letter to mother. Do not read her this one. You want to play truth with me -- it's a game I play better than you. Maybe you were unaware that I am completely without emotional feelings that most straight people have. You also have little feelings for most people. But, because of the fact that mother does have much feelings, I will call a truce with you for mother's sake and for the time being. You do not know much about me at all. You think you know me but you're not corre in your conclusions. I am a violent, vindictive, warped-minded cynic of a magnitude

that you have absolutely no conception of. Only letters of the type you sent me get a positive reaction at all. In that respect alone, you know how to handle me. In here, I am probably closer to where I actually belong than ever before. I am geing truthful, not pessimistic. I am now on a floor where they keet the nuts or psychos as they call them here. The things these lunatics do and say only amuses me and I wish I could be allowed to go near to them to steam them up and laugh at them but unfortunately I am kept away from them. I find these nuts funny, but you would cry. That's what I mean; you know nothingat all about what makes me tick. Now that I have an understanding of sorts with you, I'll tell you about something else. I have obtained permission from Warden Stenzel to have mailed in to me Pro Football Weekly and also whatever Dolphin, U of M, or college or pro and TX schedules and newspaper clippings only about football. If you no longer intend to communicate with me tell mother to tell me this in a letter and I'll try elsewhere. If you want to send the football stuff, it has to come c/o Warden Stenzel. Bruce Nasher wrote he wants to visit, so I thre Monk off the list and put Bruce on. No loss -- fuck Monk. Troll wrote also. Might be a good idea at this time to discourage your child from remembering me -- as she'll probably never see or hear from me again. She's

only a baby and won't remember in a little while anyway. She didn't know me well anyway -- too bad -- she seems like a very nice little child, too. Better this way; I know. It would be okay with me if you would advise me as to what you intend to do. I shall not mention TV again. I did not know until today that that girl made that move with the dollars. I cannot discuss that here, but it will never be forgotten and time will tell about that. If you don't wish to write me further, I can dig it also. Barry.".

Q Mr. Lipsky, did you feel in September of 1972 -- yoru case, you hadn't been sentenced yet in Nassau?

A No, I had not.

Q Had you pled guilty to manslaughter?

A No, I did not.

Q Did you think in September of 1972 that the November elections might have some effect on your case?

A Mr. Gwinn, my attorney, had written me something about the elections, that a conclusion on my case might come after the elections.

Q Did you think that the outcome of the election would have some effect on your case?

MR. EDWARDS: Objection. No relevance.

THE COURT: Sustained.

Q Mr. Lipsky, did you see a psychiatrist other than

the two you told us about, the December 1972 visits, the examination, and the earlier one that you mentioned? Have you ever seen a psychiatrist other than on those two occasions?

A Not to the very best of my memory.

Q Subsequent to your pleading guilty to manslaughter in Nassau County, wasn't your case referred by the probation department to Dr. Andrew Stuart of the psychiatric consultation clinic in Mineola?

A I don't know what you mean "referred to." I don't remember that name, Alexander Stuart or Andrew Stuart. I don't remember hearing that. I don't know what you mean by that question.

Q Have you ever heard of a Dr. Andrew Stuart?

A I don't remember the name.

Q Did you talk to somebody from the psychiatric consultation clinic in Mineola in February of 1973?

A In February of '73?

Q Yes, or any other time.

A Are you talking to someone who came to the jail to see me?

Q Either came to the jail or you went to see them; either way.

A I was in no position to go anywhere.

xxx

(Defendant's Exhibit J was marked for identification.)

Q I show you Exhibit J for identification. Does that refresh your recollection?

A I told you I was examined --

MR. EDWARDS: Could I have a look at that?

A What date is that again?

Q February 21, 1973.

A The 21st?

Q Yes.

A I will tell you what I recall, if you want to know.

Q In connection with this letter?

A I don't know if it's in connection with that letter.

I was taken, one, on September 26th, as I told you here previously today, to the Meadowbrook Hospital or Medical Center near the Nassau County jail, and there I was talked to by two psychiatrists or men, two men who were speaking to me, I think in connection with the Court-ordered competency hearing.

Q Well, we will get to that in a minute.

That was in September of '72. Did you ever see a psychiatrist after that?

A If you can refresh my memory or help me a little

bit and tell me where this man was supposed to have seen me or where, what place, because I have no recollection of that name.

Q Did you talk to a probation officer in Nassau County for the purpose of his preparing a report for the sentencing judge?

A Yes, I believe a man came to see me, a young fellow came to see me, I think it was after I pleaded to the charge.

Q I show you Exhibit 3554, showing you Page 7 thereof.

Will you look at that second paragraph?

A Where, may I ask you, is the Nassau County psychiatric consultation clinic?

Q Somewhere in Nassau County. I don't know.

A I will tell you this, if you want to know --

THE COURT: Just answer his question.

A What is your question?

MR. EDWARDS: Could we approach on this? I think counsel has a misapprehension.

THE COURT: All right.

(At the side bar)

MR. EDWARDS: May I call your attention to the second paragraph, and I think I can say what that means.

Had I been asked earlier, I could have saved a lot of time.

Unless I am in error, your Honor, unless there is something else not called to my attention, the meaning of that paragraph is that the probation office had talked it over amongst themselves.

THE COURT: It doesn't seem to me, Mr. Duke, that this suggestion is at all that there was a conference with Mr. Lipsky.

MR. DUKE: That does in connection with this as well.

THE COURT: Let me see that.

MR. O'DONNELL: That was obtained from Nassau County authorities.

MR. NESLAND: Did you ever make an inquiry with respect to that individual?

MR. O'DONNELL: We only got it yesterday.

MR. EDWARDS: Your Honor, Lipsky has already said that he doesn't remember seeing that doctor, so really nothing further could be accomplished. I will check this afternoon and find out if that doctor saw him or not.

THE COURT: He does say, as I understand him, he did see some psychiatrist, two men.

MR. DUKE: That is totally different.

MR. O'DONNELL: That is the Court-ordered one.

MR. EDWARDS: He saw a young fellow, he said, in the jail. If I were to guess, the young fellow was probably a young probation officer, but I will attempt to find out if it was the psychiatrist.

In any event, it's pretty clear Lipsky doesn't know.

MR. DUKE: I would like to ask him if he knew that this decision was made.

THE COURT: Which decision?

MR. DUKE: The decision to refer him to this clinic.

THE COURT: He has already looked at this and said it doesn't ring a bell.

MR. DUKE: Now, I want to know if he was told that that decision to send him there was made.

MR. EDWARDS: There was no decision to send him to a clinic.

MR. DUKE: The decision to send him there to have him examined.

MR. EDWARDS: There was not.

THE COURT: Mr. Duke, all we have at the moment is he remembers two psychiatrists. It doesn't seem to me that either of these goes to the point you are trying to get at.

Mr. Edwards has agreed that he will check to see if there was another one.

MR. DUKE: I will drop this one now.

(In open court)

Q Mr. Lipsky, am I correct you never heard of the psychiatric consultation clinic?

MR. EDWARDS: Objection.

THE COURT: I will allow this question. I think it has been asked and answered, but I will allow it.

A I don't remember hearing of the Nassau County consultation psychiatric clinic, or whatever it's called.

Q With respect to the psychiatric examination you had in December 1972, whose idea was that that you should be examined, yours or Mr.Gwinn's?

A Mr. Gwinn.

Q Did you tell the psychiatrist that it was your idea?

A I don't remember if I did or not.

Q Did you first tell him it was your lawyer's idea and then finally admit that it was your idea?

A If you would show me what you are referring to, maybe it would refresh my memory some.

xxx

(Defendant's Exhibit K was marked for identification.)

T3B

Q Page 5, Mr. Lipsky, would you look at this and this.

A Yes, I see it.

Q Did you tell the psychiatrist, first tell him that it was your lawyer's idea then finally admit it was your idea?

MR. EDWARDS: That what was his idea, your Honor?

MR. DUKE: The competency examination.

MR. EDWARDS: Your Honor, if Mr. Duke will offer this in evidence now, I have no objection to it. Perhaps this is the way to save some time.

MR. DUKE: Your Honor, I have no reluctance to offer it in evidence but I nonetheless would ask the same questions of Mr. Lipsky concerning it.

MR. EDWARDS: That is okay with me but I think the language of the report ought to be in evidence.

MR. DUKE: Your Honor, I think I prefer to examine it at the recesss before offering it. I think I am entitled to ask him what he told these people.

THE COURT: We will take a recess at this point. I would like to see counsel before we break for the recess.

Ladies and gentlemen, you will remember what I have been telling you right along. Don't talk with anybody or yourselves until the case is completed.

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(Jury leaves room.)

(Witness leaves room.)

THE COURT: Counsel, perhaps I better see you in the robing room.

(Robing room conference)

MR. EDWARDS: Your Honor, may I be heard for just a moment on this last matter.

The problem I have is that the report is being shown to Lipsky and the clear implication that is trying to be conveyed is that Lipsky says in that, he told the psychiatrists, according to them, that it was his idea that there be a competency exam. Now the sentences that Mr. Duke is pointing to and showing do not say that and in my opinion, no way suggest that the competency exam was Lipsky's idea. I have no objection to the introduction of important evidence. However, I think it is an improper question because Mr. Duke has no foundation for asking it. At least he has no foundation for suggesting it.

THE COURT: I am not sure about that. I think we can spend a lot of time arguing about those words which I just looked at very quickly and what their import is. If the document is going to be received in evidence, as I take it is the case, it ties in with what I wanted to say to you.

I know Mr. Duke you have heavy responsibility here and of course so does Mr. Edwards and so do I, but it does seem to me that perhaps I have been too lenient in recognizing your heavy responsibilities. I think you are entitled to show to the jury what kind of a person Lipsky is and to show that in appropriate detail. I question some of the things you have been using have any real evidentiary validity. Mr. Edwards has permitted you and I have permitted you to go along. I am extremely reluctant as I have indicated before to prevent counsel for a defendant who is under such serious charges from presenting fully his defense. On the other hand, there comes a point in time when we have to think of moving forward, if nothing else and I don't want to move forward at your expense but I am concerned about your spending time on things that we have really gone over fully before, different letters, different episodes, different time periods. After a while they don't become really different.

I think I have said all I want to say.

MR. DUKE: Your Honor, this line of inquiry with respect to this report is quite different than that which I was pursuing before.

THE COURT: I understand that.

MR. DUKE: It is vital to the defense that I obtain

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from Lipsky first of all that I bring out the nature of the examination, the time it took, the type of questions I asked, the things he said to them that is relevant to his mental condition and furthermore --

THE COURT: One thing I am concerned about is whether his mental condition in 1972 or 1973 has anything to do with his mental condition in 1975.

MR. DUKE: I represent to the court that it does.

THE COURT: I don't see how you can represent that to me, Mr. Duke. Yo . don't know any more than I do, I assume, what the medical problems are here.

MR. DUKE: I have an educated opinion and what I am going to attempt to prove is that this man is a psychopath, he is a pathological liar and he is an egomaniac.

THE COURT: I understand what you are trying to prove and I will allow you to try to establish that. My concern is we are spending more time, and we may be spending more time on this question than is necessary for you to develop for your case. That is all I am saying.

MR. DUKE: Your Honor, I am disappointed at the amount of time it is taking. It seems to me it is taking time because Mr. Edwards is making frivolous objections.

THE COURT: I haven't heard Mr. Edwards make any frivolous objections. In fact, I have heard Mr. Edwards

make very few objections.

For goodness sake, all I wanted to do was express this thought and I just wanted you to have in mind, as I am sure you do already, that we are all anxious to move forward efficiently and fairly and I intend to give you every opportunity that I think you deserve to prove your case.

MR. DUKE: Believeme your Honor, I am not stalling, but I would like to make this objection: I am going to offer this in evidence but I think it is wholly improper and I vehemently object to Mr. Edwards in the presence of the jury inviting me to offer a document in evidence that is elementary unfair and I think he should be admonished not to do that.

MR. EDWARDS: Your Honor, may I say --

THE COURT: You don't have to speak to that.

Mr. Edwards it seems to me was making a gesture which I understood was in the interest of accommodating you and I don't regard it as being unfair.

I think there can be a situation in which opposing counsel invites the other side to offer something in evidence. It can be unfair where it is obviously obvious that opposing counsel doesn't want that in evidence. I take it that is not the case here.

MR. DUKE: I concede that was not probably Mr. Edwards' motive but in the event there was something grossly prejudicial in this document, it would compromise the defendant's position extremely.

MR. EDWARDS: I knew what was in the document.

THE COURT: If that was the case, I could understand your strong feeling, but I assume it was not so.

I believe both of you are acting in the best interests of your clients and I think we have said all we need to do.

(Recess)

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T4A

(In open court; jury present.)

MR. DUKE: Your Honor, I will offer Defendant's Exhibit K for identification in evidence.

MR. EDWARDS: Your Honor, may we substitute with counsel's accord our copy of the same papers as his K for identification and have this marked K in evidence since there are no underlinings and markings on our version.

THE COURT: All right.

xx (Defendant's Exhibit K received in evidence.)

Q Mr. Lipsky, how long were you examined by those two psychiatrists in December, 1972?

A I think it was between an hour and a half and two hours.

Q Did they ask you questions about the murder?

A I think they did.

Q Did you answer that?

A I think I did.

Q Did they do anything else while they were examining you?

A Yes.

Q What?

A One of them spoke on the telephone.

Q Do you know to whom he spoke?

A I don't know to whom he spoke. I think I know to

whom he spoke.

Q Who do you think it was?

MR. EDWARDS: Objection, your Honor, unless this is based on some personal knowledge.

THE COURT: I take it from what I have heard so far it is just a guess.

Sustained.

MR. DUKE: Withdrawn.

Q Did you think it was a fair examination, Mr. Lipsky?

MR. EDWARDS: Objection, your Honor.

THE COURT: Sustained.

Q Did you have the impression they were interested in determining the truth of your mental condition?

MR. EDWARDS: Objection, your Honor.

THE COURT: Sustained.

Q Do you know what the purpose of the examination was?

A Yes.

Q What was it?

A To see if I was competent mentally to stand trial.

Q Mr. Lipsky, prior to your arrest on March 3, 1972-- March 2nd, excuse me, did you frequently use marijuana?

A Sometimes.

Q Over what-- when did you first begin using

marijuana?

A I think it was in 1967.

Q Did you use it periodically from 1967 until 1972?

A I did.

Q Did you hashish?

A On a few occasions.

Q Beginning in 1967?

A 1967 or 1968.

Q Did you ever use psychedelic drugs?

A Once, I think.

Q Barbiturates?

A You mean -- what do you mean by barbiturates?

Q Do you know what barbiturates are?

A I think they are sleeping pills.

Q Have you used sleeping pills since 1967?

A Yes.

Q Regularly?

A Are you talking from 1967 to 1972?

Q No. Have you used them from 1967 until today?

A I used sleeping pills sporadically from 1967 until 1972, and then after I was arrested I didn't get any sleeping pills from March of 1970 to -- until I got some other pills which were not sleeping pills, through the U.S. Marshal's service.

Q I take it you had trouble sleeping since 1967?

A I've had some trouble sleeping since 1967. I have had more trouble sleeping since 1972.

Q Did you have trouble sleeping before 1967?

A I don't recall that before 1967, if I had trouble sleeping.

Q Between 1967 and 1972, did you have frequent headaches?

MR. EDWARDS: Objection, your Honor.

THE COURT: Sustained.

Q When did you start taking cocaine, Mr. Lipsky?

A Around 1967.

Q Did you use it on almost a daily basis from 1967 until March of 1972?

A No, that's incorrect.

Q What is the truth of the matter?

A In 19-- I had some access, some people had cocaine in 1967 while I was still living in New York and Florida, between the two places, and I didn't have access or begin using cocaine a little more frequently until 1971, some time in the spring.

Q Did you tell the psychiatrists that examined you in December that you had used cocaine on almost a daily basis for a long time?

A I may have said that then, but the accuracy of what I just told you here now is a better recollection of my best memory of my use of cocaine.

Q Did you tell them, Mr. Lipsky in December,'72, that you had been using cocaine on almost a daily basis for a long time, did you tell them that?

A I may have said that. Would you show me what you are talking about?

MR. EDWARDS: Your Honor, since it is now in evidence, I would request it be read.

THE COURT: I just wonder whether you need to go through this, Mr. Duke. He has already stated he may have said that, that he has a different recollection now.

Do we have to go over it again?

MR. DUKE: I suppose not, your Honor.

Withdrawn.

Q When you had access to cocaine, Mr. Lipsky, how frequently were you using it?

A When, when Mr. Duke?

Q Whenever you had it from 1967 to 1972.

A I didn't really have any cocaine in my own possession that was mine from 1967 to 1971, but after--

Q Let's talk about '67.

A All right.

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Q How frequently did you use it in 1967?

A Very infrequently, only when someone else had it and offered it to me.

Q Howoften did you run into people that had it and offered it to you?

A I don't know. Maybe once a week. Maybe once every two weeks.

Q I take it that in 1971 it was more frequent than that?

A What was more frequent?

Q You used cocaine more frequently in 1971 than once a week?

MR. EDWARDS: Objection, your Honor. Again on relevance.

THE COURT: Sustained.

Q In 1967 when you got access to cocaine, would you get just one dose or would you get a quantity that you could use?

MR. EDWARDS: Objection, your Honor.

THE COURT: Sustained.

Q When did you last use cocaine, Mr. Lipsky?

A 1972. March 2nd, before I got on the plane to come back to New York.

Q Did you sniff it or how did you take cocaine?

A Sniff it.

Q Mr. Lipsky, did you sometimes use cocaine three or four times a day?

A Yes.

Q Did you sometimes use it as often as 20 times in a 24-hour period?

A I would say that's a high estimate.

Q Did you testify in Miami in the Federal District Court on August 5th of 1974?

A I believe I did.

Q Were you asked this question and did you give this answer with reference to cocaine:

"Q Sometimes did you use it three or four times a day?

"A Sometimes.

"Q Sometimes you used it as much as 20 times in a 24-hour period?

"A How do you mean use it, sir?

"Q How do you use it?

"A Sniff it.

"Q That's what I mean.

"A Yes, that's a correct statement."

Did you give that testimony in the federal district court in Florida?

A Yes.

Q Mr. Lipsky, when you were out in Nassau County, did you have a temper tantrum and bank your head against the wall?

A I don't remember if I had a temper tantrum. I remember banging my head against the wall one time.

Q Intentionally?

A Excuse me. Intentionally?

Q Yes.

A Yes.

Q Were you angry at the wall?

A No. At the officer.

Q Have you ever struck your hand against the wall in anger?

A I have.

Q On how many occasions have you done that?

A A few.

Q A hundred?

A No, nowhere near a hundred.

Q A dozen?

A Maybe a dozen.

Q When was the last time you did that?

A I can't recall, Mr. Duke. It hasn't been for some time, some quite a while.

Q Don't you have a photographic memory?

A No. I think I have a good memory, Mr. Duke, but I don't think I have a photographic memory.

Q Did you tell those psychiatrists in Nassau County that you had a photographic memory?

A I believe I did.

Q Was that a lie?

A I don't think it was a lie. [redacted]ke I just said, I don't think I have a photographic memory. I think I have a pretty good memory.

Q If something happened yesterday, you would remember it, Mr. Lipsky? You would remember it if it happened yesterday?

A If it was of significance, I guess I would remember.

Q Is it significant when you bang your hand against the wall in anger?

A Is it significant?

Q Yes. I think I would remember if I banged my hand against the wall yesterday.

You did that yesterday, didn't you, in the witness room?

A I don't remember.

Q Do you remember being in there with Patty Quinn, the red-headed girl?

A Right.

Q Weren't you crying?

A I was upset.

Q And while you were crying and upset, didn't you bang your hand against the wall?

A I may have done that.

Q Do you remember whether or not you did?

A I don't exactly remember whether I did or not, but I may have done that yesterday.

Q Does your former attorney, Mr. Gwinn, talk fast, slow or at an average speed?

MR. EDWARDS: Objection, your Honor.

THE COURT: Sustained.

Q Mr. Lipsky, you graduated from the University of Miami?

A That's correct.

Q Did you get good marks in school?

A You mean at the University of Miami?

Q Or at any point in your education.

MR. EDWARDS: Objection, your Honor.

THE COURT: Sustained.

Q Were you suspended from the University of Miami?

MR. EDWARDS: Objection, your Honor.

THE COURT: Sustained.

MR. DUKE: Could we have a side bar on that?

MR. EDWARDS: Your Honor, I withdraw. I have no objection to the question. I was objecting on relevance to save time. I have no objection.

Q Were you suspended from the University of Miami?

A Yes, sir, I think I was.

Q For stealing somebody's books?

A Yes, sir.

Q And selling them at the book store?

A Yes. I had poor grades and that other thing also happened with the books.

Q You sold a fellow student's books to the book store?

A Yes.

Q Mr. Lipsky, when you take cocaine, does it affect your memory?

A Affect your memory?

Q Yes. When you are under the influence of cocaine, do you remember what happened while you are under the influence?

MR. EDWARDS: Objection, your Honor.

THE COURT: Overruled.

A Yes, I believe that I remember pretty well whenever I sniff cocaine what happened.

Q Does it have any effect on your memory so far as you are aware?

A So far as I am aware, no.

Q What effects does it have on you?

A It makes your mouth dry, makes you alert, makes you want to have a drink.

Q Have a drink?

A Yes.

Q Were you a regular drinker prior to 1972?

MR. EDWARDS: Objection, your HOnor.

THE COURT: Well, I'm not quite sure where you are going, Mr. Duke. I'll allow this.

A What do you mean,"regular drinker," Mr. Duke?

Q Did you drink alcohol almost on a daily basis?

A I would say not every day, Mr. Duke.

Q Almost a daily basis?

A I don't know what "almost" means. I am not

quibbling with you, but I don't know what "almost" means.

Q How frequently did you drink alcohol, Mr. Lipsky?

A Three, four, sometimes five days or nights a week, when I was out somewhere.

Q When you were taking cocaine, would you normally drink alcohol at the same time?

A Yes.

Q When you got on the plane in Miami on February the 3rd, did you take cocaine and drink alcohol at the same time?

A No, I told you I didn't have any cocaine on the plane from Miami.

Q You took cocaine just before you got on the plane?

A Shortly before. An hour or so before.

Q And you had drinks on the plane?

A I did.

Q Mr. Lipsky, have you ever used an alias?

A Yes.

Q What aliases have you used?

A Mr. Graves. Mr. Holmes.

Q Any others?

A None that I can recall right offhand.

Q Do you know a person named Morris Stroud?

A Yes.

Q Is that a real person?

A Yes, it is.

Q It's not one of your aliases?

A I just told you it's a real person.

Holmes is a real person, also.

Q Those are names that you used yourself, are they not?

A You mean used -- how do you mean, "used"?

Q Have you said, "I'm Robert Holmes," to anybody?

A I may have written somebody a letter or something and signed one of those names.

Q Meaning yourself?

A That's right.

Q I show you M for identification. Did you write that document?

A Yes, I did.

Q Do you remember approximately when you wrote it?

A No, not exactly. I think it's a Christmas card or something.

Q Didyou send it to somebody?

A Yes.

Q Who did you send it to?

A Margie Jackline's son, named Dean.

Q Did you refer to him as Dean, the dog?

A Yes, I did.

MR. DUKE: I offer this, your Honor.

MR. EDWARDS: Your Honor, may we approach?

A I remember her saying, "You know, Vinny, you and Beverly are my closest friends. I love you both and I would never do anything to hurt either one of you."

Q Was she kissing him when she was saying this?

A I do remember her kissing him at least one time.

Q Was that about the same time that she was telling him that she loved him and Beverly?

A Yes, about the same time.

Q And they were her dearest, closest friends?

A I remember her saying, she said that they were her closest friends.

Q Did she also say they were her dearest friends?

A I don't remember her saying that. She may have. I don't remember her saying that.

Q Didn't you so testify on Tuesday? Isn't that what you told this jury on Tuesday of this week?

A I don't recall exactly if I said "dearest" and "closest." I may have said "dearest and closest friends."

Q Did she say, "You are both my dearest friends"?

MR. EDWARDS: Objection, your Honor. Repetitious.

THE COURT: Sustained.

Sustained. You have asked that question.

Q Didn't you testify on Tuesday, Mr. Lipsky, that

at the same time she said that, she kissed him on the cheek?

MR. EDWARDS: Objection, your Honor. There is no inconsistency, and we are wasting time, I submit.

THE COURT: Yes, I think so.

Sustained.

MR. DUKE: I object to the prosecutor's speech about the sixth time, your Honor. I ask he be admonished not to make those remarks in the presence of the jury.

THE COURT: All right. You are so admonished, Mr. Edwards.

Q When you were riding in the car, did Patsy Parks tell Mr. Pacelli she didn't want to leave town?

A Yes.

Q Did she say this several times?

A Yes.

Q Did she say that she couldn't leave her child?

A Yes.

Q Later, I understood you to say you had a conversation with Mr. Pacelli on Saturday night or maybe Sunday night or Friday night at a Japanese restaurant?

A That's correct.

Q Did he tell you at that time that she was a key witness against him?

A I remember him saying some things. I don't remember him using that phrase, "key witness."

Q Did you say in your written statement of March 2nd, Page 9, she was a key witness against him? Did you say that Mr. Pacelli said that to you?

A Yes.

Q Did he say that to you?

A Yes, I think --

Q Did he say she was a key witness against him?

A He may -- I believe he said words to that effect at some point. I don't remember exactly when or where.

Q And did he say she was a key witness, or words to that effect, against him in the trial that was coming up on February 8th or thereabouts?

A Yes.

Q He said -- did he say he just learned that his trial was going to start on the following Tuesday?

A Yes.

Q And she was a key witness against him in that trial?

A I just answered that question for you, Mr. Duke.

Q I just want to make sure I am not confusing you, Mr. Lipsky.

A The answer is yes.

Q Did he tell you what, if anything, she could say that would be the least bit damaging to him?

A When, Mr. Duke?

Q This conversation in the Japanese restaurant on Friday, Saturday or Sunday after the killing and before the trial.

A I don't remember in the Japanese restaurant if he said what it was that she could testify against him.

Q Did he say why she was a key witness against him?

A In the restaurant?

Q Anywhere else; ever.

A Up in his apartment when I first went to get him.

Q Other than the conversation that you have already related, what did he say on this subject?

A When, Mr. Duke?

Q At any time, in the apartment when you got there, or when you came back, or any other time that you can remember, Mr. Lipsky, what did Mr. Pacelli say about her being -- how she could hurt him in the forthcoming trial, other than what you have already told us?

A Something about a box and there were other people's names mentioned, and he told me or said to me

at various times that he had a list of people --

MR. EDWARDS: Your Honor, may we approach?

THE COURT: Yes.

(At the side bar)

MR. EDWARDS: Your Honor, I want to place on the record the fact that if Mr. Lipsky is permitted to continue this answer, I believe he will say that Pacelli had a lit of people whom he either planned to kill or might have killed, and that this was something Pacelli mentioned on several occasions, at one time or another after his arrest. I want to protect Mr. Duke from this impossible -- I think perhaps either the question should be withdrawn or the witness should be told to say nothing concerning Mr. Pacelli's list of people, or however Mr. Duke wants to handle it.

I assume he doesn't want this testimony.

MR. DUKE: You are right. I suggest that the Court just say "objection sustained," and we will go on to something else.

MR. EDWARDS: No, no. I am not interposing any objection whatever.

MR. DUKE: I will just go on to another area.

MR. EDWARDS: Why don't you just say"question withdrawn"? Because otherwise we are in the middle of

an answer.

MR. DUKE: All right.

(In open court)

MR. DUKE: Question withdrawn.

Q Mr. Lipsky, did the Federal Government help you get a television set and a radio for use in your cell in Nassau County?

A I believe through my attorney, Mr. Gwinn, speaking to the officials at Nassau County jail and the Federal Government's help, these two items were placed in my room at a later date after I was in Nassau County jail about five or six months.

Q There is no doubt in your mind, is there, that the federal officials were responsible for your getting a TV and a radio?

A Well, Mr. Duke, I don't know that the Federal Government was totally responsible for it. My lawyer wrote me letters on that subject, and I think he had something to do with it along with the federal people.

Q Didn't Mr. Feffer, Assistant United States Attorney Gerald Feffer, didn't he himself intervene and cause you to have a TV and a radio and other -- and a private room and other amenities?

MR. EDWARDS: Objection to form, your Honor. It's

a multi-question.

THE COURT: Yes, I think so.

MR. DUKE: Withdrawn.

Q Didn't Assistant United States Attorney Gerald Feffer secure for you a TV set in your cell?

A By "secure" for me, do you mean did he actually get it himself?

Q Is that what "secure" means to you?

MR. EDWARDS: Objection, your Honor.

THE COURT: Sustained.

Q Yes. Did he actually get it.

A No, Mr. Feffer did not actually, physically get it.

Q Was he responsible for your getting a private room in the jail?

A I think Mr. Gwinn and Mr. Feffer did have something to do --

Q The question is about Mr. Feffer only.

MR. EDWARDS: I am objecting to form, your Honor.

THE COURT: I think he answered the question.

Q Mr. Lipsky, did you tell Mr. Feffer in a letter dated -- a letter in December 1973 -- December of 1972, "I want you to know I appreciate your efforts in procuring for me the room by myself, a TV and radio, and all the

other special features I enjoy here."

Did you tell Mr. Feffer that?

A I believe I told Mr. Feffer that.

Q And did you watch horror movies on that TV?

MR. EDWARDS: Objection, your Honor.

THE COURT: Sustained.

Q Mr. Lipsky, you never told anybody in Nassau County during the interrogation of you on March 2 and 3, 1972 that Mr. Pacelli said, "Die, you bitch," did you?

A I don't recall if I did or not, Mr. Duke.

mmh 1 Lipsky-cross

T8

Q Specifically, in that written statement of March 2nd, looking at the middle of the page, did you tell the officials on March 2nd that Mr. Pacelli said, "Die, you bitch"?

A No, I did not.

Q And in your statement to Mr. Scaring on March 3rd did you say Mr. Pacelli said, "Die,you bitch"?

A Your question is --

Q Did you tell Mr. Scaring in that statement that Mr. Pacelli said, "Die, you bitch"?

A No, I did not.

Q Did you ever hear anybody say, "Die, you bitch"? In one of these horrir movies that you watch?

A On television?

Q Yes.

A That is profanity, Mr. Duke. You can't say that on television.

Q You can't?

A No, you can't say those kind of words on television.

Q Have you ever seen that in a movie?

A What? That phrase?

Q That phrase.

A I don't recall ever seeing it in a movie, in a theatre.

mmh2 Lipsky-cross

Q Did you tell us on Tuesday, Mr. Lipsky, that Mr. Pacelli had his left arm around Nancy Parks' head as he stabbed her in the throat with a knife?

A I think, yes, I think I said that here on Tuesday.

Q Is that your testimony today?

A Yes.

Q Did you see him do that?

A Did I see his arm around her head?

Q And did you see him cut her throat?

A I didn't look over at first, and then I did look over and that is what I saw, he had his arm around her head and he had struck her in the area of the neck with a knife.

Q Did you tell Mr. Scaring in your statement of March 3rd, page 30, "I think he came around the seat with a knife and he -- I didn't see this happen, I mean, I was in the car, but I didn't watch it happen--"

Did you say that?

A Yes.

MR. EDWARDS: Your Honor, can counsel be requested to complete what he is reading from there, complete the answer?

MR. DUKE: The rest of the answer, "I saw the aftermath of what happened. He gave her one of those (indicating)."

Q Is that what you're referring to?

MR. EDWARDS: Yes.

Q Did you also say that?

A Yes, I think so.

Q What do you mean when you said, "He gave her one of those (indicating)?" You apparently indicated to Mr. Scaring what Mr. Pacelli had given her one of.

A Would you read me the entire to refresh my memory?

Q I will show it to you.

A Do you want me to explain what "one of those" is?

Q Yes. I assume you can demonstrate it.

A Yes, one of those is a motion with a knife like that (demonstrating).

Q You saw that or you didn't see it?

A I saw part of it. I didn't actually see him instantaneously strike her.

Q You saw part of the throat cutting operation?

A The end of it.

Q Did you also tell Mr. Scaring, page 31, with reference to his cutting Patsy Parks, "I didn't ever see this, but this is just what he told me what happened. I mean, I didn't, in other words, I didn't watch this happen."

Did you tell Mr. Scaring that?

MR. EDWARDS: Could we have the page

mmh4 Lipsky-cross

MR. DUKE: 31.

Q Did you tell Mr. Scaring that?

MR. EDWARDS: Your Honor, could we have the couple of preceding questions also and answers read for clarification?

MR. DUKE: That is for redirect.

MR. EDWARDS: I don't think so.

THE COURT: Let me see it.

MR. EDWARDS: Your Honor, I will hand up page 31, and he is reading towards the bottom.

THE COURT: I take it this document is in evidence?

MR. DUKE: No, sir.

MR. EDWARDS: I believe counsel has said that the portion that he has read has been offered in evidence. I am asking however that when he proposes to read toward the end of the page he read what comes before it.

THE COURT: I think, Mr. Duke, we ought to have all of it.

Mr. Duke, what are you requesting?

MR. DUKE: Your Honor, in view of the length of that I will just withdraw it.

Q Mr. Lipsky, after Patsy Parks' throat was cut was that when she said, "Don't hurt me. I am a mother." or words to that effect?

mmh5 Lipsky-cross

A Yes, sir, I believe so.

Q After Patsy Parks' throat was cut and she was stabbed, I think you indicated Tuesday that Mr. Pacelli made some sort of gesture indicating that she was dead?

A Yes.

Q What was the gesture?

A Like that (demonstrating). He said, "She's dead."

Q And he was sitting in the back seat of the car?

A He was raised up in the back seat of the car.

Q And you were sitting in the front seat of the car?

A That is correct.

Q And you were looking away because you didn't see what was going on?

A At this point I was watching what he was doing and what she was doing.

Q It is your sworn testimony that Mr. Pacelli poured four gallons of gasoline on Patsy Parks and you didn't have anything to do with that?

MR. EDWARDS: Objection, your Honor, as to form. It seems to me "anything to do" --

b2 MR. DUKE: Withdrawn.

Q In fact, Mr. Lipsky you poured the gasoline on Patsy Parks and then you burnt her up? Isn't that true?

A No, Mr. Duke, that's not true. I didn't

pour the gasoline on Patsy Parks.

Q You're quite sure of that?

A Pacelli did. I didn't.

Q When you testified before the grand jury on January 31, 1973, did you take the same oath that you took in this courtroom?

A Yes.

Q Were you testifying before a panel of jurors similar to the one that you're now testifying before?

A Yes.

Q And you were interviewed by the prosecutor before you testified in the grand jury?

A You mean the same day?

Q At some time prior.

A Yes.

Q And you thought carefully about what you were going to say, didn't you?

A Yes.

Q And you told the truth?

A Yes.

Q Were you asked this question and did you give this answer:

"And at Pacelli's direction did you then pour gasoline over the body?

"A Yes, I did.

Were you asked that question and did you give that answer?

A Yes, I believe I was. I made that answer.

Q How long after Mr. Pacelli made this gesture with his hands going from side to side in front of him, how long after that did you burn Patsy Parks up?

A Five to seven minutes later, maybe ten at the most.

Q It took you about five minutes to find the road that you were looking for, didn't it?

A Another couple of minutes. I'm not sure. Three minutes or five minutes.

Q And then you drove around that?

A What do you mean?

Q You did something that took about five minutes and then you continued to drive around?

MR. EDWARDS: Objection, your Honor.

THE COURT: Yes. I don't think it's clear what you are getting at, Mr. Duke.

Q Well, I'll come back to that point of it but, in any event, you drove around for some period of time and you stopped the car, is that right?

A Yes, I stopped the car.

Q You both got out of the car?

A Yes.

Q And one of you got four cans of gasoline out of the car; right?

A Yes. I did.

Q You did.

And one of you poured gasoline, opened up four cans of gasoline, and poured them on Patsy Parks?

A Yes. Pacelli did.

Q And then you dropped a match on Patsy Parks?

A Then Pacelli said to me, "I have gasoline all over my gloves and my coat; light a match and drop it."

Q And you did it?

A Yes.

Q Did he ask you if you had a match?

A No, he knew I had a match.

Q You are quite sure that he didn't ask you if you had a match?

A I don't think so, because he had told me to pick up some matches in the Hippo.

Q How much time elapsed, your best recollection of how much time elapsed between Mr. Pacelli going like this with his hands, and your dropping the match? All these things that you described, put them all together; how much time did it take?

MR. EDWARDS: Asked and answered, your Honor.

THE COURT: I'm not sure it has. Let's hear it again.

A At the most, ten minutes, I would say.

Q How long did you stand there watching the flames burn up Patsy Parks?

A About five, six seconds; something like that.

Q Then you went back and did the things you told us about and you went to sleep; right?

A That's correct.

Q Did you sleep soundly?

A Yes.

Q No nightmares?

A You asked me that the other day. The answer is no.

Q You do have nightmares, though?

MR. EDWARDS: Objection, your Honor.

THE COURT: Sustained.

Q What route did you take back from the place where you burned up Patsy Parks to New York?

A I don't know the exact roads. Some type of highways out there on Long Island, and then we stopped and asked directions and I think we ended up -- I'm not sure, but I think it was part of the Belt Parkway, and came into New York up First Avenue, where we stopped at the Texaco station.

Q You went through Brooklyn?

A I think we went around Brooklyn, because Pacelli pointed something out to me as we were driving.

Q Do you smoke cigars, Mr. Lipsky?

A Now?

Q Yes.

A Yes, I do.

Q On March 3, 1972, you weren't even sure what Abby's last name was, were you?

A Abby?

Q Yes.

A No, I knew what Abby's last name was.

Q You weren't sure about it, were you?

A Yes, I was sure about it.

Q Did you tell Mr. Scaring, "I think his last name is Perez"?

A Would you read me the question you want me --

Q Do you remember whether you told him that or not?

A No, I don't remember, unless you refresh my memory.

(Pause)

Yes, I see that.

Q Did you tell him -- did he ask you who was his friend, Abby and who else, and did you say, "I believe Abby's name is Abby Perez"?

A I said that.

Q At some point on the 4th you got some cleaning equipment from Pacelli's apartment and went out and cleaned the car; right?

A That's right.

Q Then you got some Clorox?

A I don't remember exactly what we got. We got some cleaning equipment and paper towels and some liquid.

Q Whisk broom?

A I don't remember a whisk broom. A scrub brush, I think.

Q Ajax?

A I think it was Ajax liquid cleanser. I'm not sure exactly of all the names of the cleaning agents we used.

Q Were they all liquids or was there regular Ajax?

A I think there was some regular Ajax or Comet. I am not sure exactly of the names of the cleaning agents we used.

Q When you refer to Ajax, do you mean liquid cleaner or the dry powdery stuff?

A There is both. There is liquid and there is powder. I think we had some of each.

Q You said you had paper towels?

A Yes.

Q Any rags?

A May have had some rags, but I remember a roll of paper towels.

Q What did you yourself do with the clothes that you were wearing that night?

A When?

Q The clothes you were wearing when you burned up Patsy Parks.

A What did I do with them?

Q At any time thereafter.

A Nothing.

I took a pair of boots that I was wearing into a shoemaker a day or so later to have them fixed.

Q Was there a big pool of blood on the rug of the car on the right-hand side?

MR. EDWARDS: When, your Honor?

Q When you arrived back in New Rochelle.

A Not to my best recollection. The blood was matted, in the rug of the car; not a big pool of it.

Q Did you tell Mr. Scaring there was a big pool of blood?

A I don't remember.

Q I ask you if you told him there was some pool of blood on the --

MR. DUKE: Withdraw that last question.

Page 46.

Q Did you tell Mr. Scaring there was some pool of blood on the right-hand side of the car down on the rug?

A Yes, I told him that.

Q Was that true? Was that the truth?

A To the best of my memory, as I have just told you, the blood was in the rug, sopped down into the rug. I don't remember a pool of blood, as a puddle, which you refe to.

Q Well, this statement that you gave to Mr. Scaring was less than a month after the event, wasn't it?

A That's right.

Q Wasn't your memory better than than it is now concerning these events?

A I would say so.

Q You weren't lying to Mr. Scaring, were you?

A No, I wasn't lying to Mr. Scaring. I told Mr. Scaring the truth.

Q The whole truth and nothing but the truth?

A There may be some statements that I made to Mr. Scaring that were truth, but I can't recall exactly now, since it's almost three years, but I'm telling you sitting here now to the best of my recollection, to the best of my memory, what I remember now happened on February 3 and 4, 1972.

Q Where else was there blood -- excuse me.

Did this car have seat belts on it?

A I think it did.

Q And did it have one of those lights on it that goes on if you don't have the seat belt hooked up?

A It may have. I don't remember.

Q Did it have a buzzer that goes on if you don't have the seat belt hooked up?

A I'm not sure if it did or not. It may have. I don't remember.

Q Did Patsy Parks have a seat belt on?

A I don't think so.

Q Was there a buzzer going on? Did you hear a buzzer?

A I don't remember any buzzing.

Q Do you remember a light on the dashboard saying, "Turn on the seat belt"?

A No, I don't.

Q Was there any blood on the seat belt on the right passenger side?

A I don't remember seeing any blood on the seat belt.

Q Was any blood on the door on the inside of the right-hand door?

A I don't remember any blood there. I remember some blood on the metal stripping where you step when you get into the car.

Q That's kind of a shiny metal chrome-appearing piece of metal?

A Right. Where your foot goes.

Q And the rug, was it like an ordinary carpet, a thick tufted carpet?

A Yes.

Q Where else was there blood in the car?

A As I recall, there was some blood on the front of the front seat, the place where -- the back of your knees, the calf would rest against as you are riding upright in the front seat.

Q After you cleaned the blood out of the car, or attempted to clean it out of the car, what did you do with the bloody towels and bloody rages before you threw them away? That is, where did you put them in the car?

A In the front seat, rolled up in a ball, I believe.

Q On the right passenger side?

A Yes, that's where I was riding.

Q When you threw the knife away, Mr. Lipsky, do you remember a boat ramp that came in the boat yard, a piece of board a couple of feet wide that ran down into the water?

A Yes.

Q Did you stand on that boat ramp when you tossed the knife in the water?

A I'm not sure if I stood on the wooden platform or I just walked up the dirt to the edge of the water and tossed the knife out into the water. I don't remember if I stood on the wood or stood at the water's edge on

the sand or dirt, whatever it was.

Q Do you remember whether or not, if you weren't on the piece of wood, do you remember whether or not you were very close to it?

A How close do you mean, "very close"?

Q Six feet.

A I can't recall for sure how close to this piece of wood I was.

Q Can you give us your best recollection as to how close you were to the piece of wood? Not the water.

A I can't remember, Mr. Duke, how close I was -- are ou talking about the wooden dock?

Q Yes, the platform that goes down a little hill into the water.

A I can't remember, Mr. Duke, how close to that I was or if I was standing on it, or if I was standing at the edge of the water itself.

Q Were you more than 25 feet away from it?

MR. EDWARDS: Objection, your Honor.

THE COURT: Sustained.

Q Did you throw the knife as far as you could?

A I threw it a good distance. I don't know if it was as far as I could. I threw it a good distance underhand.

Q You are a baseball player, aren't you?

A What do you mean?

Q You play baseball?

A I used to play softball.

Q Did you pitch underhand softball?

A Yes, I used to pick some on the team.

Q Could you pitch a softball 50 yards underhand?

A How far is 50 yards, from here to the back of the room?

Q Could you pitch one twice as far as the length of the courtroom?

A Underhanded?

Q Yes.

A I don't think so.

Q Could you have pitched the knife clear to the other end of the courtroom?

A From here to the wall?

Q Yes.

A I think so.

Q If you throw it overhand, you could have thrown it even farther than that, could you not?

MR. EDWARDS: Objection, your Honor.

THE COURT: Sustained.

Q Did you ever throw a knife before?

A Excuse me?

Q Did you ever throw a knife before February 4, 1972?

A How do you mean, "throw a knife"? Just throw it into the ground or something?

Q Just throw it.

A Yes. Once when I was a kid, I went to camp, I had a hunting knife and I used to throw it into the ground to see if I could make it stick in the ground.

Q Were you wearing gloves when you were driving the car?

A When, Mr. Duke?

Q On the night that you burned up Patsy Parks.

A No.

Q Did you think about the possibility of fingerprints, your fingerprints being all over the car?

A No, I didn't.

Q Or the steering wheel?

A No, I didn't.

Q But Mr. Pacelli told you to put his gloves on before you threw the knife because your fingerprints might be on the knife?

A That's correct.

Q When you filled up with gas at this Texaco

station at First Avenue and 36th, did you use a credit card?

A I didn't pay for the gas.

Q So what's the answer to my question?

A The gas was paid for by Pacelli with cash.

Q So my question was and still is, did you use a credit card? Can you simply answer my question?

MR. EDWARDS: Objection, your Honor, he has.

THE COURT: I think he has, Mr. Duke.

Q Mr. Lipsky, when you threw the knife into this body of water, did your boots get muddy?

A No, I don't think so.

Q You never actually got into any mud, is that right?

A No, I don't think so.

Q When you say you rode in the car the next day to take it back to the rental place, was the seat wet that you were sitting in?

A No.

Q Was the rug wet?

A Not that I noticed.

Q Or the door?

A No.

Q Did you use water when you cleaned the car?

A I don't remember if we used water or just liquid cleaners, liquid detergents and other cleaner, cleaning agents.

Q Other cleaning agents like Ajax?

A Maybe Lysol disinfectant, things of that type.

Q Did the car smell of Lysol or Clorox the next morning?

A I don't remember. It may have but I don't remember.

Q When you came back through the Belt Parkway -- how did you get into Manhattan? Did you go in the tunnel?

A I don't remember how we got back. We were on an unfamiliar highway and Pacelli was driving and all I know is we got back into lower Manhattan and we went up First Avenue. We needed gas for the car, and we stopped at that gas station.

I don't recall how we got to lower Manhattan.

Q It was the Belt Parkway; there is no doubt of that, is there?

A I'm not sure. I remember Pacelli pointing out a place to me off of a highway which had, I think, had water to its left and buildings on the right, and he pointed out this place to me where he had gone some years earlier. It was a spot he pointed out to me.

Q You had been in Brooklyn before February 4th, hadn't you, Mr. Lipsky?

A Only a couple of times, like three or four times in my life.

Q And you had been on Long Island before, hadn't you?

A Just, I think, one place. A friend of mine lived in Long Island. I knew how to get to his house.

Q Did you tell Mr. Scaring, Page 40, "We drove back a long way, around the Belt Parkway, somehow, all the way back up to New Rochelle? Did you tell him that?

A Yes, I think so.

Q Does that refresh your recollection as to whether or not you took the Belt Parkway?

A I told him we took the Belt Parkway, not knowing -- I thought that's what they called the Belt Parkway, the route we were driving on, but I don't know what road we took to get to this Belt Parkway.

Q You said you stopped at a Texaco gas station at 36th and First Avenue; do you remember that?

A Yes.

Q Where did you start on First Avenue?

A What do you mean?

Q You came up First Avenue --

A Yes.

Q -- to 36th?

A I just told you. I don't remember if we came through a tunnel or over a bridge. I don't remember how we entered Manhattan.

Q Do you remember anything prior to 36th Street in Manhattan?

A Just coming up First Avenue, but I don't recall how we got back into Manhattan, as I just told you, over a bridge or through the tunnel or some other way.

Q Shortly after Patsy Parks was stabbed, your testmony is, I understand, that Pacelli's glasses were in the front of the car somewhere? They got knocked off?

A Yes.

Q They were on the floor of the car?

A Yes.

Q Down where that pool of blood was?

A I think they were on the floor of the car or on the seat. I think on the floor.

Q And you picked them up?

A Yes.

Q And Pacelli was saying, "Get me my glasses, get me my glasses, I can't see, I can't see"?

A Yes.

Q And then you drove off and you were driving along and he kept saying, "I can't see, get my glasses"?

A I think so.

Q Do you know whether or not Mr. Pacelli can see without glasses?

A I think he has trouble seeing without the glasses. I don't think he sees as well without the glasses as he does with them.

Q Did you tell Mr. Scaring that Pacelli can't see at all without the glasses?

A I may have told Mr. Scaring that.

Q Do you remember whether or not you did?

A No, but I may have told him that.

Q Are you troubled by the fact, Mr. Lipsky, that Mr. Pacelli is able to write and read and look around the courtroom without glasses?

A Am I troubled?

Q Does that cause you any concern?

A You mean am I troubled that he is sitting here without glasses on now?

Q Yes.

A Why should that trouble me?

Q Can you answer that question?

MR.EDWARDS: He has, your Honor.

THE COURT: Yes, he did.

MR. DUKE: He asked me a question, I thought.

THE COURT: He answered your question.

Whenever you get to a convenient stopping point, Mr. Duke, let me know.

MR. DUKE: Yes, I shall in just one second.

Q Did I understand you to say, Mr. Lipsky, you are quite certain that Mr. Pacelli didn't ask you if you had a match? When you were out on Long Island, you were about to burn up Patsy Parks, are you quite sure Mr. Pacelli didn't say, "Do you have a match?"

A Mr. Duke, he may have asked me do I have a match, but he previously told me to pick up matches for this express purpose.

Q Did he ask you, "Do you have a match?"

A I don't remember if he did or not. He may have.

Q Did you tell Mr. Scaring at Page 40 that he said to you, "Do you have a match?"

A I don't remember being asked that question by Mr. Scaring and making that answer, but I may have.

Yes, I see it.

Q Did Mr. Pacelli ask you if you had a match?

A Yes, he did.

Q And did you tell Mr. Scaring at Page [illegible] with

reference to Mr. Pacelli, "He can't see without his glasses at all"? Did you tell Mr. Scaring that?

A Yes, I told Mr. Scaring that.

MR. DUKE: I think this is a convenient point, your Honor.

THE COURT: All right, ladies and gentlemen. We will adjourn for lunch until 2:30. You will remember what I have been telling you. Don't talk about this case among yourselves or with anybody else. Don't read any newspapers, listen to radio or watch television.

2:30.

(Luncheon recess)

mmh 1 Lipsky-cross

AFTERNOON SESSION

2:30 P.M.

(Jury in box.)

B A R R Y G. L I P S K Y, resumed.

CROSS EXAMINATION CONTINUED

BY MR. DUKE:

Q Mr. Lipsky, did Mr. Pacelli tell you before you arrived in New Rochelle on the way back from Long Island that he planned to have you throw the knife in a body of water near his home?

A I don't remember him telling me before we got to the body of water. I just remember we got to the place where the water was and then he produced a knife and told me to put on his gloves and go down and take the knife and throw it as far as I could out in the water.

Q Are you sure that he never said anything about throwing the knife before you actually got to the Cameron Boat Yard?

A I'm not sure that he didn't say anything before we got there, but I don't recall him saying anything before we got there.

Q Did you tell Mr. Scaring on March 3rd, page 43:

"Q What did he say? Did he say, 'Throw the knife away'?

"A He said, 'I am going to give the knife to you. As soon as you get out of the car you go up to this dock and you throw it in the water up near the house in New Rochelle.'"

Were you asked that question and did you give that answer?

A If you're reading from a document of Mr. Scaring--

Q I will show it to you.

A Yes, I remember the question.

Q Did you make that statement to Mr. Scaring?

A Yes.

Q Did Mr. Pacelli tell you some time before arriving at New Rochelle that you're going to go throw the knife in the water near the dock?

A To the best of my recollection he only told me when we approached the body of water to throw it, to

b2 go out and throw it in the water, not beforehand.

Q He didn't talk about throwing the knife away? He didn't say, "You go up to this dock and you throw it in the water up near the house in New Rochelle?" He didn't say that?

A That is what I said.

Q Now I am asking you, did Mr. Pacelli say that?

A I don't recall him saying that in those words.

Q In substance did he say that?

MR. EDWARDS: When, your Honor? May we have that clarified.

Q At any point ever?

A I am slightly confused.

Q Did Mr. Pacelli ever in words or substance say to you, "You go up to this dock and you throw it in the water up near the house in New Rochelle"?

A No, I don't remember him saying that to me before we got there. I just remember what he told me upon us arriving in a car at the water.

Q Did you go with the Nassau County police to the Cameron Boat Yard?

A I went to the place where I believe I had thrown the knife.

Q With the police?

A That is correct.

Q When did you do that?

A The following morning, which would have been Friday, March 3rd, I believe, in the morning.

Q The same day you gave the Scaring statement, the statement of Mr. Scaring?

A Later that same day in the morning.

Q How many officers did you go with?

A Three.

Q Do you remember their names?

A I think it was Detective Ray Book, Detective Robert Walker, and a Sergeant Lanning, I think their names were.

Q And did you point out to them the spot in the water that you thought you had thrown the knife in?

A Approximately, yes, I pointed out approximately where I had thrown the knife.

Q What time of day was that?

A I'm not exactly sure. I think it was before noon, but I'm not exactly sure of the time.

Q Did you show them where you had stood when you threw the knife?

A Yes.

Q Do you remember where you showed them where you were standing?

A Do I remember now where I showed them where I was standing?

Q Yes.

A Yes, I think so.

Q Where was it? I mean with respect to the ramp, for example?

A Well, I don't know exactly what you mean by a ramp.

There was a dock there and a house.

Q Do you remember a big piece of wood about two and a half feet or three feet wide, about four feet thick, 15 or 20 feet long that goes down an incline into the water?

A I think I remember that, yes.

Q When you pointed out where you were standing do you remember where you told them you were with respect to that piece of wood?

A Not exactly. I told them where I was standing to the best of my recollection, that I was either standing at the edge of the water or on that wooden ramp which also runs down in the water. I don't recall now exactly where I told them I was standing, but I was standing at the water's edge.

Q Do you remember whether or not there was some cement around the land that abuts the water where that ramp is?

A No, I don't remember anything about any cement.

Q When you pointed out to them where you threw the knife, do you remember where you pointed with respect to any poles that were sticking out of the water?

A No, I don't remember telling them about where the knife was thrown in relation to any poles.

Q Do you remember any poles sticking out of the

water? A telephone pole?

A No, not offhand.

Q How far from the edge of the water did you tell them you threw it?

A I'm sorry?

Q How from the edge of the water, where the water meets the land, did you tell the police you threw the knife?

A You mean how far out in the water did I tell them it landed?

Q Yes.

A I think 20 or 30 feet, something like that.

Q Did you return to the scene after that, after March 3rd, to the boat yard, Cameron Boat Yard?

A Yes, I did.

Q When was that?

A I'm not sure of the date. It was some time, I think, August or September of last year.

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Q August or September of last year did you again point out where you threw the knife?

A I don't remember if we went to the place where the -- where I threw the knife. We may have gone to the place but I remember going -- we may have gone to the place where I threw the knife and we went to another place also.

Q Would you remember going up to the water? That body of water, is it New Rochelle Harbor?

A I have no idea what it is.

Q Do you remember going up, in August or September last year, going with police, up to the body of water that the Cameron Boat Rental is on?

A Yes, but I wasn't with the police.

Q Who were you with?

A Federal agent, and a United States deputy marshal.

Q You did go up to that same body of water, in any event?

A I believe so.

Q Did you, on March 3,1972, go with the police to point out where you threw the gas cans?

A On March 3, '72, we tried the find the place where I had -- where Pacelli had thrown the gas cans and where I cleaned the car, but I don't think we were able to

locate it on that trip.

Q But you drove around looking for it?

A We did.

Q Were the gas cans thrown in the same body of water that the knife was thrown in?

A A different location, but I think the water connects.

Q How far from where you threw the knife were the gas cans thrown?

A I think only a few blocks away.

Q Could you see from where you threw the knife, could you see the spot where the gas cans were thrown?

A I'm not sure whether you can or not. I'm not sure whether you can see the place where the gas cans were thrown from where the knife was thrown.

Q As you were looking out into the water from the Cameron Boat Rental, is the spot where the gas cans were thrown to your right or to your left?

A I think from the spot where the knife was thrown, the place where the gas cans were thrown is to the right, as you are facing the water. That's what I think.

MR. EDWARDS: I'm sorry, your Honor.

We are simply trying to identify the exhibit number. It's our Exhibit No. 4.

Q Mr. Pacelli, are you able -- excuse me. Mr. Lipsky, are you able to say whether or not this Exhibit No. 4 is the knife that you threw in the water?

A May I see it?

Q Don't rub the rust off of it.

A No, I won't.

It appears to me to be the same knife that I threw into the water.

Q You have examined this knife several times before, haven't you?

A Not several times, Mr. Duke. I think this is only the second time I have seen that knife.

Q Did anybody ever tell you whether or not where that particular knife, Exhibit 4, came from?

A I think I heard the Nassau County police say something one time in my presence.

Q Did they tell you where that knife came from?

A No, I never heard anyone say where the knife came from, but I recall someone making a comment about they found the knife to -- one policeman to another policeman, and they didn't say where the knife came from.

Q They said in your presence they found the knife?

A Yes.

Q Where did Mr. Pacelli have the knife when you were

riding into New York, into Manhattan?

A I don't know.

Q Where did he produce it from when he handed it to you?

A I don't know that, either.

Q Was the blade open when he handed it to you?

A It was in the same position that it is now, with the blade in the open position; locked open.

Q Mr. Lipsky, you took that wrapping off there. What did you look at? What was the purpose of taking the wrapping off the handle?

A To look at the knife.

Q Looking at anything in particular?

A Yes. To see if it had a little button on it.

Q Is that all you looked at when you took the wrapping off?

A No.

Q What else did you look at?

A To see if it had some numbers on it.

Q Anything else?

A To see if it had an outline of an animal on it.

Q Did it have a black panther on it?

A Very faint, but I think it had. I think that knife had, when it was new, had the outline of a black

panther on it, when it was new, and there was, I think, something lese on that knife that's not there now.

Q Did you mean that when you last saw the knife, did you literally mean there was a black panther on it?

A When I last saw that knife?

Q That is, on February 4, 1972.

A I don't remember looking at the knife then, but -- to see if it had a black panther on it, but to my best recollection, before this murder, when I had seen that knife, those are the things I remember about the knife.

Q Does it have a black panther on it now?

A I just answered that question to you.

Q Well, if you would answer it again, you are confusing me.

Does it have one on it right now as you looked at it?

A It seems to be all rusted over, but there is something on there, I believe, which is the outline of some type of animal.

Q Is there anything black on it?

A There is a lot of rust on that knife, Mr. Duke.

Q Did you see anything black on the knife?

A Well, the part that I examined where the outline of the naimal is is darker under the rust than other parts

of the knife where the rust is.

Q And your recollection is that the knife that you saw, that you tossed into the water on February 4th was a silver-colored or chrome-colored knife with a black panther on the handle?

A And other things.

Q And other things.

A Yes.

Q When you got back to the apartment, returning from Long Island, Mr. Pacelli told you at some point, "They will be coming here"?

A No, Mr. Duke. He told that to his wife.

Q In your presence?

A Yes.

Q What did you understand that to mean?

A That the police would be coming there.

Q To investigate a murder?

A That's what I took it to mean.

Q And after telling you that, he told you to take Patsy Parks' pocketbook down to the end of the hall and drop it down the chute?

A No, sir. I think he told me that. I'm pretty sure he told me that before we even got up to the apartment. He told me to go down the hall and throw the pocketbook down

the chute and then come back to the apartment, and then when his wife opened the door he told her, "They will be coming here."

Q And then, was it at that point that you went down, or shortly thereafter you went down and threw the pocketbook down the chute?

A I just told you, Mr. Duke, I'm pretty sure I threw the pocketbook down in the trash chute as he was going into his apartment, and it's only 20 or 25 feet down the hall where I went to throw the pocketbook down the trash chute.

Q Did he shortly thereafter give you his boots and tell you to throw them down the same chute?

A That's correct.

Q And did you do that?

A I did.

Q Did he tell you whether or not there was an incinerator in the building?

A No, he didn't say.

Q Do you know whether or not there was an incin erator?

A To my best knowledge, there was no incinerator in the building; it was just a trash dumpster down there, like a big trash can on wheels that everything went down

that chute into a big square trash can of some kind.

Q When you threw -- the gas cans, I take it -- were the tops on the gas cans when they were thrown into the water?

A No, I think Pacelli took the tops of the gas cans off and threw them in the water and then threw the gas cans in the water without any tops on them, hoping that the water would fill them up and sink them.

Q Did they float on their sides?

A I believe they did.

Q This was after he told you to take the -- take his gloves to throw away the knife so your fingerprints wouldn't be on the knife?

A Yes, this was after that, after that incident.

Q Did he tell you to wipe of the gas cans so there wouldn't be any fingerprints on the gas cans?

A I don't remember him telling me that.

Q Did you wipe off the gas cans to get the fingerprints off?

A I don't remember wiping off any gas cans.

Q Can you tell the jury whether or not you did wipe off the gas cans?

MR. EDWARDS: Objection, your Honor.

THE COURT: Sustained.

Q Mr. Lipsky, did you ever travel -- have you ever been to Fire Island?

A I have not.

Q Was it a Checker cab that you took up to New Rochelle on the early morning hours of February 4th?

A What do you mean by a Checker cab, Mr. Duke?

Q Well, there are Fords, there are Chevrolets, there are Plymouths, and there are Checkers. It's a make of car.

A I can describe the cab to you, Mr. Duke, but I can't tell you if it was, quote, a Checker cab.

Q You don't know what the word "Checker" means?

A To me -- I'll tell you what it means to me. That it has a band around the side of it with black and white squares around the yellow part of the cab on both sides, about that wide, and that's what I call the Checker cab.

Q Maybe you have answered this.

Was it a Checker cab? Did it have those things on it?

A I'm not one hundred percent sure that it had that black and white checker on it, but I think it did.

Q Have you ever been in a cab on any other occasion that had jump seats in front of the passenger seat?

A On many occasions.

Q Did you ever notice what kind of a car you were riding in? The make of the car?

A Yes.

Q What make is the car?

A I forget the make of the car, but it's specially built to be a taxicab, I believe.

Q Have you ever seen a Ford or a Chevrolet or a Plymouth or any car manufactured by a major company that -- a taxi that has the jump seats in it?

A No, Mr. Duke. Just those special large taxicabs that I have described a couple of days ago here, which had the jump seats. It was a special make of car or cab.

Q It was made by a company that just makes taxicabs, isn't it?

A That, I don't know, but I think that's correct.

Q That's the kind of cab you were in?

A When I went up to Pacelli's house?

Q Yes.

A That's correct.

Q As you sit there, you don't understand that to be a Checker cab?

MR. EDWARDS: Objection, your Honor.

THE COURT: I think we have been over this, Mr. Duke.

Q Mr. Lipsky, did you tell Mr. Scaring on March 3rd, Page 12, "I think it was a yellow cab and I think I told the detectives before it was one of the big ones. I don't know, specially made. The cars that are made just for cabs.

"Q Checker cab?

"A I think it was a Checker. I believe so."

MR. EDWARDS: Objection, your Honor. There is no conflict, no reason to read it.

THE COURT: Sustained.

Q Did the driver of the cab say that it would be a flat rate because it was an out-of-town trip?

A Yes. We haggled over the price. We had a discussion over how much it should be, nd he said it was outside the City limits, so it would be a flat rate.

Q It had nothing to do with, necessarily with the mileage or how far it was?

A What had nothing to do?

Q The fee that you had to pay the cab driver.

MR. EDWARDS: Objection, your Honor. I think it calls for the operations of the cabbie's mind.

MR. DUKE: Withdrawn.

THE COURT: I was going to allow it, Mr. Duke. You go ahead, Mr. Duke.

Q Did the cab driver indicate that the price that you had to pay was simply a matter of negotiation between you and the driver?

A Well, he named one price and I named another one, and we came to a settlement. We came to a figure.

Q Did he say how he calculated his price?

A No, I don't think he said how he calculated his price.

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Q Do you remember what his price was?

A Yes, to the best of my memory it was either 12 or $14, I think.

Q And when you haggled with him did he come down below 12 or 14?

A I don't think so. I think we agreed upon a figure. I don't remember exactly what it was, 12 or $14, somewhere around there, and then somewhere along the way he wanted me to pay him before we got to the destination.

Q Did he say why?

A Yes, he said it was late at night and he had nothing against me, but he would just rather I would pay him in front, pay him in advance before we got to the destination, because he didn't want to get stuck for the fare.

Q He was concerned that you might jump out and take off?

A I don't know what he was concerned with, but I said, "All right," and I paid him.

Q Have you ever taken a cab from midtown Manhattan to New Rochelle on any other occasion?

A Yes, I believe I have.

Q Prior to February 4th?

A Yes, but not too often.

Q Several times?

A Yes, a few times.

Q When was the first time, Mr. Lipsky, that you told anybody that the meter was off in the cab?

A I don't recall, Mr. Duke.

Q You didn't say anything like that in the statement to Mr. Scaring, did you?

A I don't remember what I said about the meter to Mr. Scaring, Mr. Duke.

Q Were you ever told, Mr. Lipsky, that the police had attempted to find some record of a cab trip on February 4th?

A Yes.

Q Were you ever told the results of that effort?

A I don't think I was ever told the results of the effort. I was never informed that they did, in fact, find the cab and the driver that drove me up there that night.

Q Did they ever tell you how much effort they put into it?

A Yes, on a couple of different occasions.

Q Did they interview you periodically concerning this matter of the taxicab trip?

A Not periodically. I think once by a detective in Nassau County who asked me some questions about it for a few minutes, and a few more times by a federal narcotics

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agent in this building.

Q When was the last time you were questioned by an agent or a policeman concerning the cab, the cab trip?

A I think it was some time last summer. I can't place the exact date for you. I think it was in August or September or early October. I may be wrong in those dates, but that is when I think was the last time I was spoken to about the cab and the driver and that matter.

Q Al Bracer was a friend of yours, wasn't he, Mr. Lipsky?

A He was an acquaintance.

Q Was he a friend?

A He was not a very close friend of mine. He was an acquaintance. I was friendly with him.

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Q Were either of the Bracers in the apartment when you returned from Long Island?

A When in the morning when we returned?

Q Yes.

A No.

Q Who was there?

MR. EDWARDS: Objection, your Honor, as asked and answered.

THE COURT: I will allow this.

A Vincent Pacelli, Jr., he was with me, Beverly

Pacelli, Abby Perez and Barbara Jalaba.

Q Mr. Lipsky, would you describe Pacelli's apartment? How many rooms did it have? Start with how many rooms it had.

A Well, it was a split level. When you came in the front door of the apartment, you had to go inside the building and up the second floor. There was a living room. Behind that there was a bedroom and bathroom. There was a kitchen and a dining room area. And down a set of stairs where I think there were two more bedrooms, two or three, I think two more bedrooms and another bathroom.

Q How many bedrooms does that make in all?

A I think there were three bedrooms.

Q Were there beds in the three bedrooms?

A No, there were beds in two bedrooms, the one upstairs and one of the two bedrooms downstairs.

Q Was there a dining room table?

A I don't remember if they had gotten a dining room table or not. I am not sure.

Q Was there a lot of furniture in the house?

A Not a lot. Some. Not a lot.

Q It was not fully furnished?

A No, it was not.

Q Mr. Lipsky, were you interviewed by a probation

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officer in the Nassau County jail after your guilty plea to the manslaughter charge?

A I believe he was a probation officer and I believe it was after I pleaded to the charge.

Q Did he tell you that he was interviewing you for the purpose of preparing a pre-sentence report?

A Yes, I think he told me that and I think you asked me that yesterday.

Q I asked you about the one down in Miami.

A I'm sorry.

Q Did he tell you it was for the judge to determine what sentence to give you, to take into account in determining your sentence?

A I don't know if he told me in so many words, but he wanted my background, he wanted some background of my life.

Q You knew, didn't you, that he was preparing a report for Judge Spitzer to read before he sentenced you?

MR. EDWARDS: I object.

MR. DUKE: We have not touched this at all.

THE COURT: I am not sure whether it is the same episode, Mr. Edwards. I will allow this.

A I remember the interview.

Q The question is, you knew that the report was being

prepared for Judge Spitzer to read before he imposed sentence on you?

A Yes, I believe so.

Q When you told the probation officer down in Florida that you were employed some place, where was it you said you were employed?

MR. EDWARDS: Objection. We have been through this. He is now shifting to the interview in Florida, which we exhausted.

MR. DUKE: Your Honor, I am refreshing my recollection for the purpose of asking the next question.

THE COURT: All right.

Q Where was it you told the probation officer in Florida you were working?

A I think I told him I was working in a a plastics hanger factory that had two names, Scott Packaging Industries and CSB Industries, Inc.

Q Did you tell the probation officer in Nassau County that you were working in the same place before your arrest?

A I don't remember what I told the man in Nassau County.

Q Showing you Exhibit 3554, page 6, will you read to yourself the first full paragraph.

A The first paragraph?

Q The first full paragraph.

A Yes, sir, I read that.

Q Did you tell him that you were employed at some company?

A I did.

Q What was the name of the company?

A CSB Industries.

Q That is one of the same ones that you told the Florida people about?

A Florida probation officer?

Q Yes.

A I believe so.

Q Did the same friend, Mr. Brody, tell the probation officer that you were employed by his company?

A Did Mr. Brody tell the Nassau County --

Q Yes.

A It says so right there. I seem to recall something else about the Florida, about what I may have told the probation officer in Florida, but I am not sure. If you will let me explain --

Q Relevant to your occupation?

A Yes.

Q All right.

A I'm not sure, but I may have told Donald Thomas, who was my probation officer in Florida, I may have told him that I was employed at Mr. Waffles, Inc., a restaurant in New York City, in Greenwich Village, which was not true. But I may have told him that. But I don't recall.

Q You did tell him that you were employed at CSB Industries?

A I told which probation officer?

Q The man in Florida.

A Are you telling me that or asking me?

Q You testified to that yesterday.

MR. EDWARDS: Is that a question?

THE COURT: Yes.

Q Are you changing your testimony?

MR. EDWARDS: Objection.

THE COURT: Mr. Duke, are you asking a question or making a statement?

Q I am asking a question. Whatever else you told him, did you tell him in Florida that you were employed by CSB Industries?

A I think I did.

Q As a matter of fact, you had Mr. Brody write him a letter and confirm it, didn't you?

A I believe so.

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Q And you did the same thing in Nassau County?

A What? Tell the probation officer--

Q -- that you were employed by CSB Industries.

A That is correct.

Q And you had Mr. Brody confirm that?

A I don't know if I had Mr. Brody confirm that, since I was in jail. But if that paper there says Mr. Brody made a statement --

Q In 1970, Mr. Lipsky, did you take $20,000 from a man for the purpose of going to Puerto Rico and buying some cocaine?

MR. EDWARDS: Objection.

Q Did you hear the question?

A I didn't hear the end of it.

Q That was the end of it.

A Yes, I did.

Q Was that before or after you were indicted in the stolen stock case?

A I believe it was just after I was indicted in the stock case. I am not sure, but I think it was after -- now, just a moment. I think it was after my grand jury appearance in Florida, but before the indictment.

Q Do you remember when you were indicted?

A I think it was June 25, 1969, or 1970. I forget

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which year.

Q It was one or the other, 1969 or 1970?

A Yes, I think it was 1970.

Q Did you have a customer in your brokerage firm that gave you about $40,000 to buy stock for?

A Yes.

MR. EDWARDS: Objection, your Honor. It seems to me we have covered this previously. It seems to me yesterday morning we have been all through that transaction.

MR. DUKE: We have not.

THE COURT: I don't remember the $40,000 episode. I remember a lot of cross-examination about the stock fraud.

MR. DUKE: This has nothing to do with the stolen stock, your Honor.

THE COURT: All right, go ahead.

Q Did you and some friends of yours conspire to cheat your customer out of $20,000 or more?

A I'll answer that, and can we go back to your question previously because it was an erroneous question. I would like to answer it correctly if I could.

Q Please do.

A You asked me if a customer of mine gave me $40,000 to buy stocks for him. That isn't what happened.

I bought stocks for my customer and he paid the brokerage firm the forty some-thousand dollars. He

didn't give me a lump, a package of money of $40,000 and instruct me to buy stocks.

Q Very well.

In effect, you sold this customer $40,000, approximately $40,000 worth of stock through the firm and he paid for it?

A That is correct.

Q Did you then proceed, you and a couple of friends, to cheat him out of about more than $20,000?.

A That's correct.

Q Did you do that by taking $3,000 or $4,000 a week bets from him on sporting events?

A It wasn't done over a period of time, $3,000 or $4,000. It was done in a different manner.

Q It was done what?

A In a different manner.

Q How did you do it? How did you cheaqt him out of the money? Tell the jury.

A It was a simple plan, that the man liked to bet large sums of money on football games, and myself and two other people devised a plan, and told him the teams he was betting on and then we told him that he lost this X amount of money, $20,800, I think it was, and he paid it.

Q You told him what he was betting on after the

games had already been played?

A After the games were in progress.

Q Didn't you tell him after the games were played, when you knew the score, then you told him what he bet on?

A Yes, that's right.

Q And as a result he had to sell $20,000 more of the stock to pay off --

MR. EDWARDS: Objection, your Honor. I think we have gone pretty far.

THE COURT: Sustained.

Q Did you also have an arrangement with a customer where you bought stock that was really his so he could cheat on his income tax?

MR. EDWARDS: Objection, your Honor.

THE COURT: Sustained.

Q There came a time, did there, Mr. Lipsky, when you were informed that the Federal Government in Florida was considering indicting you for income tax evasion?

A I was never told that I was going to be indicted for income tax evasion.

Q Were you told that it was under consideration?

A Can you tell me the year you are talking about?

Q The year that -- of the information?

A No. When I was informed.

Q Around December of 1972.

A Yes, I remember some communication from Mr. Gwinn about that.

Q And the Internal Revenue Service was making a claim that you had evaded $44,000, thereabouts, of income taxes; do you recall that?

A Mr. Duke, I think the claim or the lien was income not reported. I think that's what it was.

Q The claim was that you had not reported $44,000, thereabouts, of income?

A Yes, sir.

Q Do you remember what years that claim was related to?

A I'm not sure. I think it was '68 and 1969.

Q Did Mr. Gwinn, your attorney, ever tell you that the Government in Florida was considering indicting you on the criminal charge for failure to report that $44,000?

A I don't remember Mr. Gwinn ever telling me in word or in letter that the Government, the IRS people, were considering indicting me, but I remember Mr. Gwinn sending me a six or eight-page form from IRS when I was in the Nassau County jail. He said"the other matters about the $44,000 I do not understand. Would you write me back

a letter explaining where this income has come from?"

MR. DUKE: May I have this marked, please?

xxx (Defendant's Exhibit W was marked for identification.)

MR. EDWARDS: Your Honor, I am informed that counsel wishes to see if this paper refreshes his recollection. I just think it ought to be made clear that it's not a letter to him; it's a letter to someone else.

MR. DUKE: Your Honor, I don't think there is any point in that comment. I was simply going to show Defendant's Exhibit W to the witness.

Q Mr. Lipsky, does that refresh your recollection as to whether or not you were told that criminal charges were being considered against you for tax problems?

A May I have one more moment, please?

Q Surely.

A I'm sorry.

Q Does it refresh your recollection as to whether or not anybody ever told you that you were being considered -- criminal charges were being considered against you for your failure to report $44,000 on your tax returns?

A Mr. Gwinn talked to me about the tax matter, but your previous question which was, I think, did anyone ever tell me or did I know there was a proposed indictment

against me for income tax nonreportance, the answer to that is I was never told that there was a proposed indictment against me for my tax problems.

Q Now would you answer the question, Mr. Lipsky?

MR. EDWARDS: Objection, your Honor.

THE COURT: Sustained.

Q In any event, Mr. Lipsky, when you found out that the Government had found out about the $44,000, what did you do?

A When I received the letter, a copy from the Internal Revenue Service?

Q Yes.

A I sat down in my room in the jail and wrote Mr. Gwinn a long letter explaining -- pardon me -- explaining what each and every notation on the form from the Internal Revenue Service was about and where it named a person and a check that I had cashed for X amount of money, I wrote him out a long, informative letter which explained where all that money came from and to whom it belonged.

Q Didn't you also tell Mr. Gwinn to contact the federal authorities in Florida and tell them you were very anxious to give some information, to see if you could trade the information for the taxes?

A Yes.

Q In substance?

A Yes.

Q And did he succeed in that venture?

A In what, in contacting --

Q Did he trade your information for the taxes?

A If you mean did some people come to talk to me, is that what you mean?

Q As a result of telling Mr. Gwinn that, did some people come to you from Florida, some law enforcement people?

A Yes, they did.

Q Did you give them some information?

A Yes, I did.

Q About some criminal activities in Florida?

A Yes.

Q Did Mr.Gwinn tell you that that, in words or substance, that seems to be the end of the tax problem?

A I don't remember him saying that to me in those words or in any other words, but I do remember him saying to me that he thought, he believed that possibly the information I gave the people that came to talk to me about the tax problems might be used in some further criminal case.

Q And since then you testified -- haveyou testified in any criminal trials down in Florida since this tax problem

came up?

A In one case.

Q Have you given any grand jury testimony concerning any other cases?

A I've given some grand jury testimony, but there has been -- I only testified at one trial down there.

Q And you haven't paid a dime of those -- of that $44,000, have you?

A No, sir.

Q Not ten cents? You don't expect to?

A I don't expect to.

Q And you heard nothing more about the criminal charges for tax evasion?

A Against me?

Q Yes.

A No, sir.

Q And you never filed any income tax return at all for 1971, did you?

A I don't believe so.

Q Has anybody suggested to you that you owe the Government any money for 1971, income taxes?

A I didn't file, Mr. Duke, but --

Q You didn't pay, either, did you?

A No, I didn't. And no one has ever told me how

much I owed.

Q And you never asked anybody how much you owed?

A No, sir.

Q And nobody suggested that you committed a crime for failing to file an income tax return, nobody in the Government?

THE COURT: I think we have gone over this fully, Mr. Duke.

Q Mr. Lipsky, in the suppression hearing that was held in Nassau County on November 20, 1972 -- is that correct, the correct date?

A Yes, 1972. I'm not sure about the exact month and day.

Q When the police officers and the agents questioned you in Nassau County on March 2nd and 3rd, did Federal Agent John LaPore strike you physically?

A To my best memory he did.

Q Did or did not?

A It's my best memory he did.

Q He did?

A Yes.

Q Were you warned of your Constitutional rights by any of the police officers who questioned you?

A When?

Q On March 2nd or March 3rd, prior to the taking of the two statements that we have been talking about.

A Are you talking about after I was at the police station?

Q Yes.

In the police station, did anybody warn you of your Constitutional rights?

A I think I was warned -- told of these rights two times in the police station.

Q Your attorney asked the Government to have John LaPore go out and testify in your behalf, did he not, at the suppression hearing?

MR. EDWARDS: Objection, your Honor.

THE COURT: Sustained.

Q Mr. LaPore did testify in your behalf at the suppression hearing?

MR. EDWARDS: Objection to form, your Honor. If he means was Mr. LaPore called as a witness by his attorney, I have no objection to that.

THE COURT: Yes, I think so, Mr. Duke.

Can you rephrase the question?

Q Was Mr. LaPore called as a witness by your attorney, Mr. Gwinn?

A I think he was.

Q Did he testify -- did he not testify that you were not warned of your rights?

MR. EDWARDS: Objection, your Honor. Hearsay and irrelevant.

THE COURT: Sustained. Yes.

We will take a short recess.

Can I see counsel for just a minute?

(At the side bar)

THE COURT: I don't know how much more you've got, Mr. Duke, but it does seem to me that your cross-examination is becoming of very little evidentiary value. It's cumulative, I don't mean in the sense that it is dealing with subjects that have been dealt with before, although that is sometimes the case.

It also seems to me that some of it is of very remote relationship to the question of credibility. Maybe you have some new things to develop which you believe are important, but I'm not disposed to let you continue much longer with the kind of cross-examination that I've heard in the last hour or so.

All right.

MR. EDWARDS: Your Honor, there is one matter in connection with 3500 and analogous material that I think I ought to put on the record now. I have a

couple of papers here.

Your Honor, I can begin to put this on the record --

MR. DUKE: Excuse me. May I make one point? I would like to make an offer of proof that the answer on the last question would have been yes, that Mr. LaPore did testify that Lipsky had not been warned of his Constitutional rights and further, that LaPore was present during the interrogation.

THE COURT: All right.

MR. EDWARDS: Your Honor, Mr. Wall inquired of me sometime ago whether I would inform him of the place in which Mr. Lipsky is presently incarcerated and this matter remained pending until now. I informed Mr. Wall that I intended to decline to provide this information because the Marshals Service has informed me that the security problems are such that in their opinion this information shouldn't be disclosed.

I may say what I think is already in the record in many cases here in this court. Mr. Lipsky has testified not only numerous times against --

THE COURT: I don't have any problem, Mr. Edwards, with your taking that position. I assume if there is a good reason for Mr. Wall and Mr. Duke to interview Mr.

Mr. Lipsky, that can be arranged, but I don't see that -- I'm not going to require you to disclose his present whereabouts.

MR. EDWARDS: Your Honor, we have turned over copies of papers which have been marked as 3724 to defense counsel. We have a set of papers marked 3724-A that come from the place of his present incarcertation and I have reviewed them.

First of all, it appears to me they contain no 3500 material. Number two, they appear to me to contain my Brady material of any kind. I think they have no significance whatsoever.

In any event, I'm submitting them to your Honor with a request that you review them and order them sealed. They reveal where he is presently incarcerated. I have a memo of law, incidentally, that I handed to Mr. Duke and I will now just for the record -- simply for the record, your Honor, may I hand you a memo of law that I have served on him. It covers that question of inquiry into where he lives.

THE COURT: You started to say something, Mr. Wall?

MR. WALL: Just so the record is clear as to the basis for the request. I understand the Government's

position on the matter.

The defense is relying on the case of Smith v. Illinois, the holding of which, as I understand it, is that the defense is entitled to the whereabouts over any substantial period of time of the witness for the Government on the grounds that, number one, knowledge as to the address of that witness may be helpful in investigations such as whether or not the witness may have made inconsistent statements to persons with whom he was, and I don't think that in a case of this sort, balancing the equities, the Government's reasons for nondisclosure ought to prevail over the principle of Smith v. Illinois.

THE COURT: I will take a look at the Government's memo. I see they refer to Smith v. Illinois.

MR. O'DONNELL: As for your in camera inspection of 3724, if there might be some way in which to reveal information but not reveal whereabouts --

THE COURT: I had that in mind. It seems to me if there is 3500 material or Brady material in here -- let me consider it.

MR. EDWARDS: In my review of the material I did not find any such material.

THE COURT: All right.

(Recess)

T5 (In the robing room.)

THE COURT: Gentlemen, I have looked through 3724A and in my view it is perfectly clear it does not contain any 3500 material or any Brady material.

And as to the whereabouts of Mr. Lipsky, I have read Smith v. Illinois and it seems to me that under all the circumstances here which Smith v. Illinois recognizes, that is, the personal safety of Mr. Lipsky, I am not going to require that his whereabouts be disclosed.

In this connection, Mr. Wall, you didn't give me any specific reason why you need his whereabouts, and, certainly, in the absence of something very specific, which I have not heard, I am not going to require that that be given.

MR. WALL: To be specific, your Honor, although it is difficult to be specific, number 1, it is potentially a source of information as to any prior inconsistent statements he may have made; number 2, it is some sort of indication as to the type of surroundings he is in, and--

THE COURT: Why do you want to know what kind of surroundings he is in?

MR. WALL: As a bearing on the credibility, on the manner in which he has been treated by the governmebt.

THE COURT: What is the third point? You started

to say something else.

MR. WALL: Thirdly, whether or not he is, in fact, in a custodial situation or whether he has the type of liberty where he can go out with a marshal on an evening or whatever. Who knows? I don't know.

b2

THE COURT: None of those reasons are satisfactory to me to disclose his whereabouts and I am not going to do so.

MR. DUKE: I missed part of the conference at the side bar, but may I suggest that the government be required to disclose where Lipsky has been kept by the government prior to his being taken to his present whereabouts.

THE COURT: I don't see the need for that. What difference does it make?

MR. DUKE: The need is the same as Mr. Wall explained.

THE COURT: Do you have any objection to doing that, Mr. Edwards?

MR. EDWARDS: Your Honor, the difficulty is that Mr. Lipsky is incarcerated in a so-called safe house.

THE COURT: I take it you don't mean the kind of a house you and I live in?

MR. EDWARDS: No, your Honor, unless you are far better protected than I am. He is incarcerated, but the point is, your Honor, there are only a certain number of these safe houses in the federal system.

THE COURT: Gentlemen, I don't think we need to go any further than this. I am not going to require any disclosures of where he has been or where he is now.

MR. EDWARDS: May I simply note for the record that I am not trying to preclude Mr. Wall or Mr. Duke from asking him questions as to whether he is allowed to run around the countryside on private errands or whether he is, in fact, not really incarcerated in any real sense. They are going to receive negative answers, I can represent that to them. He is incarcerated, really, in a fairly similar way to a prisoner in an institution run by the Bureau of Prisons. There are some distinctions. He receives a per diem allowance, and out of that they take the cost of his subsistence. There are various other things, nothing of any particular significance in my view. But if they wish to ask, I don't mind that. I simply don't want them asking him where he is.

MR. DUKE: It's not necessary to make a record that we asked Lipsky where he is on the stand? This will be considered to precludeus from asking that?

THE COURT: Yes, that's what I am saying.

MR. EDWARDS: Since we are making a record, let me note that there is a security problem, and I am not only relying on the fact that the United States Marshal servic

has told me this, I am relying upon the history which I believe is very well known of all the cases in this district in which Lipsky has testified and which have resulted in the convictions of numerous persons apparently associated with organized crime, including simply, as an example, Herbert Sperling, who received an exceedingly long sentence, and I think that many of the other people, the facts concerning those persons that are in the records of all those trials, make it abundantly clear that someone who testifies against them may well be in very extreme danger for the rest of his entire life.

THE COURT: I would like the record to show that I am returning to Mr. Nesland 3724A.

MR. EDWARDS: I think this should be sealed, if the court please.

THE COURT: Yes.

Two other questions. I think it was you, Mr. Wall, who pointed out to me that there was someone in the courtroom who was a possible witness, and you were going to speak to Mr. Edwards about that.

MR. WALL: The only thing you need to know, I immediately did advise Mr. Edwards of the fact there was a psychiatrist present, and I have heard nothing from him since.

MR. EDWARDS: No, there is no problem.

b3 THE COURT: Off the record.

(Discussion off the record.)

(In the courtroom with the jury in the box.)

BY MR. DUKE:

Q Mr. Lipsky, while you are testifying, when you testify for the federal government in this courthouse and in Florida, either in trials or in grand juries, you have been paid, have you not?

A Yes, sometimes.

Q How much are you paid?

A How much have I been paid total?

Q Yes.

A Back in 1973, starting back in 1973 and ending some time in 1974 I think I was paid around a total of a thousand dollars in witness fees. and the reasons I was paid that is that some time I was lodged in a motel where I had to buy my own meals and I said, "How am I pay these motel bills?" And I was told through the use of witness fees.

Q In addition to that you get $6 a day from the government?

A It used to be $6 a day, but some time in the last year, a year and a half it went up to $8 per day, and,

Mr. Duke, the federal institution that I am incarcerated in, that is to pay for all good that myself and fellow prisoners eat and for things like that.

Q You mean you have to pay for the food of your fellow prisoners?

A No, I have to pay for my own food from the $8 per day, subsistence from the federal government and through the marshal service.

Q Have you actually gotten these witness fees and these other payments? Or do they deduct your income tax deficiency from it?

A I'm sorry?

Q Do they actually credit you with all this money or give it to you?

A You mean all this $8 a day?

Q And the $20 a day?

A It is not handed to me, the $8 a day is not handed to me. The supervisor of the federal institution where I am incarcerated credits an account for myself and every other prisoner who is imprisoned at this institution and they split it in half. The man who runs the place where I am incarcerated has decided that right now $4 a day is taken from each prisoner and put in a pool for food, and two of the prisoners buy all the food for the week.

THE COURT: Mr. Lipsky, you are telling us things we don't need to know.

THE WITNESS: I'm sorry, sir.

Q You actually get credited with all this money? There is no deduction for income tax?

A None that I know of.

Q Either that you owed from the past or that you might owe currently?

A None that I know of.

Q Have you filed an income tax return reporting any of this money?

THE COURT: Mr. Duke, I don't think you need to go any further on this.

Q Mr. Lipsky, you actually asked the government to pay you more than that, didn't you?

A Can you be more specific, Mr. Duke?

Q Did you have a discussion with a federal agent concerning additional compensation for your information?

A I had a conversation with an agent some time ago and he said he would check into it with his superiors and see what, if anything, could be done, and at this point nothing has occurred, nothing has happened.

Q You asked him for more money?

A No, no. Not more money. Not more money. I just asked him if he could see if he could get me any money through his agency.

Q Did the agent indicate that he was going to ask the Government to pay you money for the information you had given to them?

A No, he didn't. He said he would check with the U. S. Attorney's Office and his boss and he would make inquiries along those lines and let me know what they told him, and he has told me nothing further since the time I asked him, and he hasn't paid me a penny.

Q You were sentenced on your Nassau County manslaughter conviction in July of 1973; is that correct?

A That is correct.

Q And you were sentenced to zero to 20 years, is that correct?

A An indeterminate term to 20 years was the judge's sentence.

Q You understand by that you are eligible for parole immediately, do you not?

A No, Mr. Duke, that's not what I understand at all.

Q What is your understanding concerning eligibity

for parole?

A That according to the law of the State of New York, I must be in a New York State correctional facility for ten months under my sentence before I can even be considered eligible for parole.

Q Hasn't the Federal Government undertaken to obtain some kind of a waiver of that requirement on your behalf?

A Mr. Duke, there is a letter that was given to me by the United States Attorney's Office recently. I think what you are asking me is all spelled out in that letter about my parole situation.

Q What I'm asking you, Mr. Lipsky, is at any time has anybody in the Federal Government indicated to you that they will attempt to obtain some waiver of the requirement that you just testified about?

A Mr. Edwards has told me that it is his position and his feeling that since I have been incarcerated for three years almost, that it is equitable in his way of thinking that I have been incarcerated, whether in a State facility or a federal prison facility, that my incarceration should count toward my time when I may meet a New York State parole board, and if you would refer to the letter I mentioned to you, I think it spells it out very

clearly.

Q Is the answer to my question yes?

MR. EDWARDS: Your Honor, I object.

THE COURT: Sustained.

Q Has anybody in the Federal Government indicated to you that they will attempt on your behalf to obtain a waiver of the requirement you just testified about?

MR. EDWARDS: Objection, your Honor.

THE COURT: The waiver of the requirement you are talking about, the ten months' requirement?

MR. DUKE: The ten months' requirement.

THE COURT: Sustained.

Q You applied for parole three months after sentence, did you, Mr. Lipsky?

A No, sir. I didn't apply for parole. I wrote a letter on my own, asking what the requirement and what the rule -- the rules and regulations of New York State about parole on my type of sentence were, because my attorney didn't know, and Mr. Gwinn, my former attorney, had terminated his services on my case, and I wrote a letter and I received a response from New York State, which I just told you about.

Q Did you make an argument in that letter that you ought to be paroled immediately?

MR. EDWARDS: Objection, your Honor.

THE COURT: Sustained.

Q Is it your understanding, Mr. Lipsky, that when you are through testifying for the Federal Government that you will be eligible for parole on your manslaughter conviction?

A No, Mr. Duke. According to the rules of the New York State parole board, which I have just told you --

Q Well, then, can you --

MR.EDWARDS: I'm sorry, your Honor. Shouldn't he finish his answer?

THE COURT: Yes.

Go ahead, Mr. Lipsky.

THE WITNESS: May I hear your question?

THE COURT: You started to answer his question. You said the rules --

A The rules of the New York State parole board say that any New York State sentenced prisoner must be in a New York State correctional facility for ten months before you are even eligible to see a New York State parole board.

Q So your understanding is you have to get out of federal custody and into State custody before you can be paroled? Before your time starts to run; is that correct?

A That's what the regulations say of the New York State parole board.

Q And you have no understanding that the regulations are not going to be applied to you?

A No. As I referred you to the letter that Mr. Edwards gave me, he said in the letter, if I am not mistaken, that someone in the U. S. Attorney's Office will make the position -- make the information known to the New York State parole authorities or correction authorities that the time that I have already served, whether in federal or State custody, should count as if I were in a State facility, New York State correctional facility at this time, instead of being in a federal prison institution.

Q Mr. Lipsky, when you went down to Florida in February of 1972, did you tell any of your friends about the Parks murder?

A Yes, I did.

Q Who did you tell?

A I told Diane Borinsky. I told Diane Caine. I told Alan Harris. I told Margie Jacklone.

Q You knew you were in a lot of trouble when you were down there in Florida in February, didn't you, concerning the Parks murder?

A Yes, sir.

Q And you thought about it a lot?

A Yes, sir.

Q You knew when you came back to New York in early March that the authorities wanted to question you concerning Patsy Parks, didn't you?

A Yes.

Q You knew when you came back on that airplane that there would be authorities waiting for you at the airplane to question you?

A I didn't know it for a fact, but I had a strong feeling.

Q And you thought a lot about what you were going to say when they questioned you, didn't you?

A Honestly, I did not.

Q Did you think at all about what you were going to say?

A Some, but I didn't give it a tremendous amount of thought.

Q When you made the statements on March 2nd and March 3rd, you thought that Pacelli would be indicted by Nassau County authorities for first-degree murder, didn't you?

A Yes, I did.

Q And you thought that by testifying against him,

you would get off relatively easy?

A Yes, I did.

Q But you discovered, didn't you, that Nassau Count District Attorney wanted to puc you away for 99 years?

Mr. Lipsky, can you answer a question without looking at the prosecutor?

MR. EDWARDS: Objection, your Honor.

THE COURT: I don't think I have to say anything further.

Go ahead, Mr. Lipsky.

A I'll put it, I knew I was indicated for murder in the first degree.

Q You believed that the Nassau County District Attorney's Office wanted your blood and your life, didn't you?

A Yes.

Q And you believed that they wanted, if they could do it, they would give you 99 years for the murder of Patsy Parks?

A Yes.

Q You hired a lawyer named Rosenthal?

A No, sir. I don't think he was ever hired by my family. He did come to see me upon one occasion, one or

two occasions, I believe one, with his associate.

Q Did you tell him on or about March 7th that you had some information that you wanted him to see if he could peddle for you, or words to that effect?

MR. EDWARDS: Objection, your Honor.

THE COURT: Overruled.

A I don't remember saying words to that effect to Mr. Rosenthal. I hardly -- I remember seeing him once, maybe twice. I don't remember asking him to peddle any information for me.

Q Did you tell him you were anxious to earn your letter?

A I don't remember saying that.

Q Did you ask him to contact the federal authorities concerning your ability to assist in connection with narcotics investigations?

A I hardly remember -- I remember his name. I remember what he looked like, but I really do not remember much of what I said to Mr. Rosenthal.

xxx (Defendant's Exhibit X was marked for identification.)

MR. EDWARDS: Your Honor, I think it's appropriate simply for me to note that this is not a letter either to or from Mr. Lipsky.

Q Showing you Defendant's Exhibit X for identification, would you look at the second paragraph?

A Yes, I see it.

Q Does that refresh your recollection concerning your conversation concerning your conversation with Mr. Rosenthal?

A Not really, as it's almost three years ago, but as I told you, I did have a conversation, one or two, with Mr. Rosenthal, who is an attorney.

Q Did you tell him, in words or substance, that you were extremely anxious to earn your letter --

MR. EDWARDS: Objection, your Honor.

Q -- with the federal authorities?

THE COURT: The question was asked and answered. I will allow it once more.

A You are talking about earned my letter?

Q In words or substance.

A That's a letter that Mr. Rosenthal wrote and he said that. I don't recall saying it.

Q Did you indicate that you were interested in -- did you suggest to him that he contact the federal authorities?

A I may have.

Q And did you tell him, in words or substance, that

you had some information that you thought the federal authorities would be interested in?

A Yes, I think I did.

Q And did he do that?

A Do what?

Q Contact the federal authorities and tell them that?

A I don't know if Mr. Rosenthal ever contacted the federal authorities.

Q Did Mr. Gwinn?

A I think Mr. Gwinn did.

Q And did he tell them that you had some information for them?

A Mr. Gwinn?

Q Yes.

A Yes, Mr. Gwinn did.

Q Concerning narcotics activities?

A Yes.

Q You felt, didn't you, Mr. Lipsky, that the State authorities, that they ought to indict Mr. Pacelli?

A Yes, I did.

Q And you demanded that they indict, didn't you?

MR. EDWARDS: Your Honor, could we inquire, demand of whom that they indict Mr. Pacelli? I don't

understand.

THE COURT: You say you don't understand?

MR. EDWARDS: No, your Honor. The question is he demanded that they indict. Does the question mean that he told the district attorney or somebody that he demanded that Mr. Pacelli be indicted?

THE COURT: Are you objecting to the question?

MR. EDWARDS: Yes, your Honor.

THE COURT: I sustain the objection.

Q Did you discuss with anyone, Mr. Lipsky, your feelings that Mr. Pacelli ought to be indicted by Nassau County?

A Yes.

Q And you complained of the district attorney's failure to indict Mr. Pacelli, didn't you?

MR. EDWARDS: Objection on relevance grounds, your Honor.

THE COURT: Sustained.

Q You told Mr. Gwinn to try to get Mr. Pacelli indicted, didn't you?

MR. EDWARDS: Objection, your Honor.

THE COURT: Sustained.

Q And you hoped that by getting Mr. Pacelli indicted by Nassau County the attitude of the Nassau County

authorities toward you might change, didn't you?

A Yes.

Q But you began to believe on or before March 7, 1972, that you were in an awful lot more trouble than you thought you were on March 3rd, didn't you?

MR. EDWARDS: Objection, your Honor.

THE COURT: Sustained.

Q Mr. Lipsky, your false testimony in the two cases that have been mentioned here earlier, December 1972 and June 1972, produced a mistrial in one --

MR. EDWARDS: Objection, your Honor. May we approach on this?

THE COURT: I'll sustain the objection.

MR. DUKE: May I make an offer of proof?

THE COURT: Yes.

(At the side bar)

MR. DUKE: Your Honor, I intend to ask him if his false testimony produced a mistrial and a vacation of a conviction. I intend to ask if in addition to that two cases in which he testified were reversed on appeal, and elicit that in all four of those cases he blamed everybody else, blamed the ineptitude of district attorneys trying the case, and even if that's rule out, I want to prove through the Morvillo letter primarily and other documents

questioning him that he was very perturbed and worried when the mistrial and the vacated conviction occurred because he felt that the federal authorities were very angry at him, and hte letter clearly indicates that.

It seems to me the first Appellate Court decision in this case plainly indicates that that's relevant and as a further foundation for asking him if he isn't terribly anxious as he sits there on the stand to get a conviction for the Government and to make it stick, which is based upon statements he has made in documents and letters --

THE COURT: I think the Morvillo letter, is that's the same letter I am thinking of, may have some probative value, but the rest of what you are suggesting in your offer of proof, Mr. Duke, I don't think is useful and I won't permit it.

MR. DUKE: Your Honor, I also seek by that to show that Mr. Lipsky believed that unless he can make a conviction stick, he is not going to be released. He is going to be a witness until he is through testifying and he won't be through testifying until he makes it stick.

THE COURT: I won t permit a line of questioning designed to elicit that point.

The Morvillo letter, if that's the letter I think it is, may have some independent usefulness.

MR. EDWARDS: Your Honor, I have a recollection, and Mr. Wall can correct me if I'm wrong, that Mr. Wall was authorized to enter into an agreement with me which covered which portions of the Morvillo letter could be put in evidence, and that we arrived at such agreement, and I have no objection to putting in what it is we agreed to put in.

If I am correct in that; I think I am. Wasn't that part of it?

MR. WALL: I spoke to Mr. Edwards this morning and picked out the paragraph that I read. There has been an apparent failure of communication between myself and Mr. Duke, because I did not realize Mr. Duke intended to put the rest of it in.

MR. DUKE: I don't intend to put the rest of it in. That's my good-faith basis for asking the question.

THE COURT: I see. All right. I don't have any problem. I'm not going to allow this.

MR. EDWARDS: Your Honor, frankly, I am thinking rather than talking. That's a rare --

THE COURT: Perhaps if you would like to think about it a little bit longer. How much longer do you have on the cross, Mr. Duke?

MR. DUKE: I think fifteen, twenty minutes.

THE COURT: Do you want to do it right now? Why don't we finish it up?

MR. DUKE: I would rather not.

THE COURT: Why don't we finish it up?

MR. DUKE: I can't represent to the Court that I can finish.

THE COURT: Let's take another fifteen minutes and see if we can.

On this question we have just been debating, let's reserve on that overnight and you can think of it.

MR. EDWARDS: All right, your Honor.

One other matter I might mention now so that Mr. Duke will have it in mind: If he fails to finish this evening for any reason, I would like, in order to save time on redirect, to review some facts with Mr. Lipsky prior to putting him on on redirect. Of course, I have a right to do this.

However, I informed the Court I wouldn't talk to him while he was on cross and I wondered, under these circumstances, if there was any problem with my interviewing him this evening or early in the morning in connection with the redirect, inasmuch as Mr. Duke is virtually finished with cross-examination.

MR. DUKE: I have no objection.

MR. EDWARDS: Thank you, sir.

THE COURT: Mr. Duke, you said you had two or three points to put on the record. Let's go to 5:15 or 5:20 and see if you can finish up.

In any event, if you are going to do that, and I think you ought to try, these two or three points, let's plan to deal with them at 9:00 o'clock tomorrow morning.

MR. DUKE: In that case, your Honor, even if I finish, I don't want to rest formally.

MR. EDWARDS: I can understand that.

THE COURT: All right. We will wait and see, then.

On this question of Mr. Duke's offer of proof, I take it, Mr. Edwards, you want to think about that some more? We will all think about it some more and we will deal with it again. We will discuss it again the first thing in the morning.

MR. EDWARDS: Yes, Judge. That's fine.

MR. EDWARDS: Thank you, sir.

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THE COURT: All right. We will wait and see, then.

On this question of Mr. Duke's offer of proof, I take it, Mr. Edwards, you want to think about that some more? We will all think about it some more and we will deal with it again. We will discuss it again the first thing in the morning.

MR. EDWARDS: Yes, Judge. That's fine.

T7 (In open court.)

THE COURT: Ladies and gentlemen, we are going on for a few minutes past 5 o'clock, but not very long. I hope you don't mind.

BY MR. DUKE:

Q Mr. Lipsky, as you sat out there in the Nassau County jail in early March, 1972, you believed, did you not, that one of the highest priority items within the federal government was narcotics cases?

A Yes, I did.

Q And you continued to believe that up until today?

A Yes.

Q You still believe that?

A Yes, I do.

Q You told your attorney that on March 7, 1973, didn't you?

A What attorney?

Q Mr. Gwinn.

A Yes, I may have said that to him.

Q Was Benny Febre in the narcotics business?

A When, Mr. Duke?

Q Any time.

A I only know what I have heard, that he was in the narcotics business prior to my living with him in 1971.

Q Did you tell the federal authorities what you heard?

A Regarding Benny Febre?

Q Yes.

A Yes.

Q Did you tell them whom he worked with?

MR. EDWARDS: Objection, your Honor, on relevance. No, I'm sorry, withdrawn.

A I told them who I thought he had worked with when he was in that business.

Q You didn't tell them that until February of 1973, did you?

A I don't recall exactly, Mr. Duke. I may have told them that before. I was interviewed many times by many agents.

Q Does that sound like the approximate date that you first told them about Benny Febre?

A I don't understand your question. About Benny Febre's former activities?

Q Yes.

A No, I think I told them about that before that date.

Q Where is Benny Febre?

A I have no idea.

Q Where is Al Bracer?

A I think he is a fugitive.

Q Do you know where he is?

A No, I don't know where he is.

Q Did Febre tell you he was in the narcotics business?

A I don't ever believe that Febre told me he was in the narcotics business.

Q Was he in the narcotics business with you?

A He was never in the narcotics business with me.

Q Are you certain?

A He was never in the narcotics business with me.

Q Was he in the narcotics business with Marge Jacklone?

A I don't know, but I don't think so.

Q Mr. Lipsky, when you were in the narcotics business was one of your functions changing small money into large money?

A That is correct.

Q You would go to the bank with five and ten dollar bills and get fifties and hundreds?

A That is correct.

Q When did you start doing that?

A I don't recall exactly, but it was in around the beginning of the summer, I think, of 1971. I'm not

exactly sure of the date.

Q Could it have been the beginning of the fall of 1971?

A It could have been. I just told you I am not sure of the date when I started changing money.

Q Are you sure that it was not earlier than the summer of 1971?

A When you say the summer --

Q Any part of the summer. Are you sure it was not in the spring of 1971?

A Like March or April, you mean?

Q Yes.

A I doubt very much it was in March, April or May that I was changing any money in the banks.

Q You didn't change money for any other purpose, that is, this was narcotics money that was changed by you?

A That is correct.

Q You never in your life changed any money, small money into large money in a bank that was not narcotics money?

THE COURT: May I see counsel at the side bar.

(At the side bar.)

THE COURT: I am suggesting that we are losing the attention of the jury, that they have had a long day,

and another five or ten minutes is not going to make that much difference, so I propose that we finish as soon as Mr. Duke winds up this particular line of questioning.

MR. EDWARDS: I have no problem with that but I simply wanted to interpose an objection to this question on the ground that it is collateral.

THE COURT: I don't see the point of any of this, Mr. Duke.

MR. DUKE: I can assure you the point will become clear later in the trial. I will connect it up.

THE COURT: I will allow you to get an answer and then we will adjourn.

(In open court)

THE COURT: Will the reporter read the question.

(Question read.)

A I am sure that some time in my life, Mr. Duke, I have gone in a bank in New York or Florida or elsewhere and asked for a fifty or a hundred dollar bill for money in smaller denominations than that.

Q I will narrow it down. Did you ever in your life take a thousand dollars in small bills in a bank and change them into large bills when it wasn't narcotics money?

A I may have. I think I may have, but I can't recall the exact time or instance you're speaking about.

Q Did you ever do it in the City of New York in 1968. and 1969 and 1970?

A I may have, but I can't recall an exact instance in '68, '69 or '70 when I did it in the City of New York.

Q When you did it was it narcotics money?

MR. EDWARDS: Objection, your Honor, since he can't recall.

THE COURT: Yes, I think that is too iffy, Mr. Duke.

Q To your best recollection, Mr. Lipsky, you never took a large amount of small bills into a bank in New York and got large bills prior to the spring of 1971?

MR. EDWARDS: Objection, your Honor.

THE COURT: I will allow it.

I assume, Mr. Duke, later on you are going to show us why this has any meaning.

MR. DUKE: I certainly am, if I am going to get a straight answer from the witness.

MR. EDWARDS: Objection, your Honor.

THE COURT: Will you answer the question.

A Yes, I may have, Mr. Duke, if you can show me what you are talking about.

Q If I can show you my proof you will tell the truth.

MR. EDWARDS: Objection.

THE COURT: I think we have had enough on this line for the time being.

Ladies and gentlemen, I am sorry I kept you past the 5 o'clock closing hour. It's been a long day. I hope you will have a good rest tonight. I will repeat once again my admonition, which I am sure you know by heart and I am sure you are taking to heart: don't talk amongst yourselves or with anyone else about the case; don't read any newspapers or listen to television about it. Get a good night's rest. I will see you tomorrow morning.

(Jury excused.)

THE COURT: Good night, counsel, and I will you at 9 o'clock.

(Adjourned to January 24,1975, at 9 A.M.)

WITNESS INDEX

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Name	Direct	Cross	Redirect	Recross
Barry G. Lipsky (Resumed)	471			

EXHIBIT INDEX

UNITED STATES OF AMERICA
v.
VINCENT PACELLI

January 24, 1975,
9 A.M.

--

(In the robing room.)

THE COURT: I had hoped to have a transcript of yesterday's proceedings by this time. One thing I was somewhat concerned about, at the very tail end of the day, the last moment or two, I thought, Mr. Duke, your comment about not getting a straight answer from the witness was something that could be appropriate in summation, but I didn't think at that particular point of time during cross-examination it was appropriate, that, in effect, it was a comment on the witness. I thought I would say something to the jury, not specifically directed to that, but just to remind them what lawyers say and what the court says is not to be taken into account in determining what the facts are.

This also brings to mind something which applies to both of you. There hasn't been much of this, but there has been a little of it, comments by counsel about opposing counsel in front of the jury. You both know that that is unprofessional, and I don't expect to hear any more of such

comments. I don't mean to point a finger at anybody in particlar. I don't mind, for example, if we getback here in the robing room and you want to call yourselves all kinds of names. I don't mean to suggest for a moment that that is what has been happening. I am concerned about maintaining the dignity of the proceedings in the courtroom, especially in front of the jury.

MR. DUKE: Your Honor--

THE COURT: I don't think we need to discuss it any further, Mr. Duke. I don't regard this as anything of terribly important significance. Frankly, I was a little upset yesterday at my own behavior when I acceded to your request to admonish Mr. Edwards. I didn't think on reflection that he had conducted himself in such a way that admonition was necessary. I just wanted to get this off my chest.

MR. EDWARDS: Your Honor, I don't think there is any problem here.

THE COURT: I don't think there is any problem, either. Let's go on to the business.

MR. EDWARDS: Let me just say in my view there is nothing for you to say to the jury at this time. I take it in your Honor's charge you will remind them that the comments of counsel are not evidence.

THE COURT: All right. And one final word: I am completely baffled, Mr. Duke, as to the relevance of changing small bills for larger bills. Of course, I will entertain a motion to strike if that does not become more clear to me than it is now.

MR. DUKE: I will explain it.

THE COURT: Let's go ahead.

MR. DUKE: The small bills --

THE COURT: No, let's leave that. I just want to remind you of it.

MR. DUKE: Your Honor, on the matter of Mr. Feffer and the tapes, I know that there have been representations to the court that we would not go into certain matters related to this without warning to the court. I am certainly in full agreement with those representations, but I am a little but unclear as to the borderline of that. I suppose I should get to that later. We think we're entitled to prove that Lipsky's grand jury testimony of April 11, 1972, was elicited by Gerald Feffer. We think we are entitled to prove that his testimony in the December, 1972, case, which is 72 Cr. 664, was elicited by Gerald Feffer. I think we're entitled to prove that on the very day prior to the grand jury testimony of April 11, 1972, Mr. Feffer not only promised Mr. Gwinn that he had a verbal contract of immunity and that

Mr. Lipsky would not be prosecuted for anything that came out of his mouth, but that that statement was heard directly by Barry Lipsky.

THE COURT: That came out of his mouth with respect to that matter?

MR. DUKE: It was not what was said. What was said--

THE COURT: Well, I have not heard the tape, of course, but your memo makes it clear, the extracts in your memo, as I recollect them makes it clear that he would not be prosecuted as to anything that he said about that matter.

MR. DUKE: The precise quote is Barry Lipsky will not be prosecuted for anything that comes out of his mouth in that case or any other case.

THE COURT: As to what he said at that point in time?

MR. DUKE: Your Honor, the tapes indicate that he had not done anything at that point. That was an agreement to permit him to talk.

THE COURT: Well, I will have to take another look at that. But I read it very carefully, and the phrase "any other case" stopped me for a moment.

MR. DUKE: Your Honor, we have the series of tapes that began early in March and conclude, I think, in May, and they indicate that Mr. Lipsky was talking -- they do

not prove conclusively -- but they indicate that at some point Mr. Lipsky was talking to Mr. Feffer about the killing of Patsy Parks for the purpose of preparing a pre-sentence report for Judge Pollack with respect to sentencing Pacelli in 71 Cr. 614, and, in any event, the conversations made abundantly clear that Gwinn, Lipsky and Feffer were making a deal for the purpose of covering a lot of information that came from Mr. Lipsky and that he was going to talk to them about several matters, including, although the word is not mentioned, the killing of Patsy Parks.

MR. EDWARDS: Could I be heard on this?

MR. DUKE: I'm not nearly through, your Honor.

THE COURT: Your offer of proof toward the end of the day yesterday, is that the same subject that we're talking about or is that different?

MR. DUKE: That is entirely different.

Now, in this connection we think we are also entitled to prove based upon the Gwinn letter of June 1, 1972, which is referred to in our memorandum, the Lipsky letter to Morvillo of December 22, 1972, and Lipsky's letter to Gwinn about the tapes, those three letters, we think, warrant us in inquiring of Lipsky approving that when Lipsky's perjury was disclosed at the second trial --

THE COURT: The second trial of what?

MR. DUKE: In the second trial in which perjury occurred with respect to promises and so forth, the December, '72, trial, there was a discussion between Mr. Phillips and Mr. Morvillo and Mr. Lipsky and perhaps one or two other prosecutors, though the documents that we have are strong evidence, we believe, that Lipsky after his perjury was disclosed was scolded by the prosecutor not for lying with respect to the promises, but for not telling them that Gwinn had taped the conversation. In other words, very bluntly, he was scolded for getting caught committing perjury. And we think that all of this evidence, including the tapes themselves as opposed to the transcripts, the tapes themselves conclusively prove, I believe -- I think anybody who listens to them will agree -- conclusively prove that Lipsky heard everything Feffer said and that Gerald Feffer heard everything Lipsky said and that Gerald Feffer, therefore, knew that Lipsky knew the precise terms of the deal, and Lipsky will so testify. Lipsky will testify that he heard everything Gerald Feffer said to Mr. Gwinn, which is what he told Mr. Gwinn on the phone, "I heard everything." The tapes will prove that Feffer even heard Lipsky say that he heard everything.

THE COURT: Well, your memo, I think, makes that abundantly clear.

MR. EDWARDS: Your Honor, there are two separate issues here, it seems to me, and I think the first one, which I would suggest can be disposed of separately, is the issue of whether the defense in this trial is entitled to attempt to show that Assistant U. S. Attorney Feffer who prosecuted the case in June 1972, but who was not involved in the December trial, nor has he had any connection with the murder prosecution, either this time or last time, attempt to prove that he knew when Lipsky was giving false or inaccurate testimony in the June '72 trial, that he knew thatLipsky's testimony was false.

Now, this issue, which they claim is supported by these tapes -- and I'll leave that for a moment as to whether they support it -- this issue has been raised -- this is at least the third time around, and his memo is incorrect in suggesting that at the time Judge Tenney presided over the first trial of the murder case these tapes were unavailable. They were of course available, and this entire issue was presented to Judge Tenney, and the grounds on which he ruled it out, the grounds on which Judge Pollack ruled out this same business, and in each instance affirmed in the Court of Appeals, is really that it is collateral.

The point is that this trial here concerns as

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the crucial issue whether Pacelli killed Patsy Parks, of course, and a major subsidiary issue necessarily is the truthfulness of Lipsky. Whether an Assistant U. S. Attorney who put Lipsky on in that first narcotics trial was acting improperly or not is an issue exceedingly collateral and remote, and that is why the Courts have excluded it. The reason, if I may say --

THE COURT: Mr. Duke says that he was promised by Mr. Feffer that he would never be prosecuted.

MR. EDWARDS: Your Honor, he has conceded on the stand, and no one has prevented them from showing it and they have shown it, that his lawyer, Mr. Gwinn, told him that he was not going to be prosecuted on any of these federal cases, and that was his understanding. They have proven that conclusively.

I just want to add some things on the collateralness of the question of the Assistant --

THE COURT: I have ruled on this before, and I don't think I have heard anything which is likely to change my mind.

MR. DUKE: Your Honor, I am not through. I don't think I have made my point.

THE COURT: All right, you can come back to it, but let me hear his second point.

MR. EDWARDS: Just in a sentence, let me conclude by pointing out that the reason collateral matters ought to be excluded from a trial are the incredible amount of time they take to try, trials within trials, concerning whether Mr. Feffer was aware of this situation which was happening in these telephone calls in his office, and since he has been seriously impugned here, I simply want to make clear I, personally, have put in a very large amount of time as Chief of the Criminal Division with Mr. Feffer and with all others involved in that incident, with Mr. George Leisure, who is representing Mr. Feffer in a proceeding which I'm sorry to say has been brought in the City Bar Association.

Therefore, I know what evidence we would have to produce to meet these charges and I know that it would involve calling a number of Assistant U. S. Attorneys. It would involve calling this man, Walter Gwinn, this attorney in Florida, and I can assure your Honor, having talked to him on several occasions, that it would take several days to secure any information from him on direct or cross-examination. It would be an interminable proceeding over something with such a remote bearing on Lipsky's credibility that it would be wholly improper.

In closing, I simply want to emphasize if we

did not have, and I say this with the utmost sincerity, if Mr. Seymour had not had, if Mr. Curran did not have, and if I did not have complete faith in Mr. Feffer's integrity upon the exhaustive review this matter received, he would not be here. In fact, he is here and, as far as we are concerned,he is in high standing.

Turning to this other matter, I take it this involves fundamentally the use of the Morvillo letter on cross-examination, which we were adverting to at the end of the day yesterday. On reviewing it, and on reviewing the opinion in the opinion in the Court of Appeals, I will concede that there are relevant lines of inquiry on the Morvillo letter that do not and should not move into whether the Assistant U. S. Attorneys had any knowledge that Lipsky's testimony was false at the time it was given.

THE COURT: Does anybody have the Morvillo letter?

MR. WALL: I can get it for you, your Honor.

MR. EDWARDS: Maybe I should hold until Mr. Wall gets it.

THE COURT: Go ahead.

MR. EDWARDS: Fine.

It seems to me that Mr. Duke has raised a relevant and proper line of inquiry, perhaps, when he says

he is entitled to cross-examine Lipsky on the basis of the Morvillo letter to inquire as to whether Lipsky thinks that he must secure, for example, the conviction of Pacelli in this murder case in order to help himself on his parole or with some subsequent matter. It goes to his motive to testify, and I think that's true.

Mr. Duke says that he wants to cross-examine Lipsky as to why the prosecutors were mad at him following the trial in December. I think as long as he is not trying to raise an issue that has been ruled out as collateral as to whether the Assistant U. S. Attorneys knew of that false testimony, I think there is a relevant line of inquiry there, although I must say, your Honor, that the Morvillo letter itself shows one thing crystal clear, and that is it shows that Lipsky is beseeching my predecessor-Chief of the Criminal Division, Mr. Morvillo, he is beseeching him to believe that Lipsky was confused when he was giving this testimony and was not deliberately lying.

It seems to me that really the letter itself disposes of a suggestion that we were not mad at him for giving inaccurate testimony. It's very clear that he is saying to Mr. Morvillo, in substance or effect, I don't have the letter in front of me, "You must believe me. You must believe me. I was trying to tell the truth and only

the truth, and that's all I have tried to do in all my conversations with the Federal Government."

To me it makes clear what I know anyway through years of association with this Office, in it and in opposition to it. I think he can go into it as long as he is not trying to try the issue of whether the Assistants knew that this testimony was inaccurate at the moment it was being given.

THE COURT: Now I'm confused. Maybe you can straighten me out, Mr. Duke. You said you hadn't finished. Go ahead.

MR. DUKE: On the first line of inquiry that's raised by our memorandum, that is, the implication of Mr. Feffer, his knowledge of the perjurious nature of Lipsky's testimony before the grand jury in the June 1972 trial, first of all, Judge Tenney -- the evidence that we are talking about now, the tapes, the transcripts were never offered to Judge Tenney. No questions were asked concerning what was said on those tapes. No questions were asked concerning what Mr. Feffer said to Mr. Gwinn. The only thing that was done in that trial is that Mr. Balliro said, ask Lipsky if his false testimony didn't produce a mistrial and a vacation of the conviction.

The next question was, and that was done with the

full knowledge of the prosecutor trying that case, that question was ruled out. The Court of Appeals held that was within the judge's discretion.

What is presented here is very different. With respect to Judge Pollack in 73 Cr. 881, Judge Pollack left this evidence in. He let in the fact that -- let in the relevant conversations on the tape, that is, he permitted me to ask -- I got it in, asked Lipsky about these conversations and that he heard them. Then I elicited that Feffer obtained his testimony before the grand jury and Feffer elicited the testimony in the June 1972 case and permitted me to argue to the jury that Feffer knew that Lipsky was lying to the grand jury and to the trial, and that all came in.

THE COURT: That, of course, was a narcotics case. It was a case in which the telephone conversations were a part of it.

MR. DUKE: That wasn't the basis on which they came in and I just don't agree that that's what the conversations were about. They were not exclusively concerning narcotics.

THE COURT: You didn't say anything in your brief which indicated that both conversations related to what we've got.

MR. DUKE: Your Honor, there is no doubt that Mr. Lipsky had talked to federal agents, Mr. Lipsky has already testified, federal agents concerning the murder of Patsy Parks before April 11th, and it was anticipated he would continue to talk to the Government concerning the murder of Patsy Parks, and I believe we can also prove out of Lipsky's mouth that Mr. Feffer began working closely with Lipsky and interrogating him periodically in early April of 1972, and that that continued up through the balance of 1972, and that on numerous occasions the two of them conversed about the murder of Patsy Parks.

Now, the relevance of it, your Honor, is twofold. Lipsky's story has changed in some particulars since, substantial particulars, since he testified in Nassau -- since he gave the statements in Nassau County and it has changed -- it changed during the period in which, as he refers to it, Mr. Feffer, his friend, was giving him TV sets, et cetera, et cetera, making those promises to him and talking to him about a federal prosecution of Pacelli.

Now, the relevance of it is the effect on Lipsky's state of mind, the second aspect of the relevance of it. He is sitting there on that stand and he knows that a federal prosecutor in this office knowingly elicited perjury from him before the grand jury and in that first trial, that is,

the June 1972 trial. He knows that that happened and he knows that he hasn't been punished for it, and he knows that that federal prosecutor hasn't been punished for it, and it seems to me that he could very logically infer from that that his interest lies in telling -- in saying what he thinks the prosecutors want him to say, and that whether it's true or false is of no importance, and I think our cases clearly snow that we are entitled to elicit that evidence.

THE COURT: Are you still not finished?

MR. DUKE: Still not finished.

THE COURT: All right.

MR. DUKE: With respect to Mr. Edwards' suggestion that he has thoroughly investigated it and has a firm faith in Mr. Feffer, I suggest to the Court that nobody who has not listened to these tapes can claim to have investigated this matter, and I suggest that our copy of the tape be marked as a Court exhibit --

THE COURT: You said in your memo that you were going to attach a transcript of the tape and you didn't do so.

MR. O'DONNELL: The problem was in photocopying. The transcript is attached to an earlier motion that we filed, a pretrial motion.

MR. WALL: The motions in the case, Exhibit C, have all the transcripts and when we came to the conclusion one evening that it would take too long to have the transcript taken over to my office and sent down, I remember that it's in the motion papers in this case, the entire set of transcripts.

MR. NESLAND: I believe it's in their motion to disqualify Barry Lipsky.

MR. EDWARDS: Your Honor, I did not, of course, pontificate --

THE COURT: I assume we have it, although I haven't seen it.

MR. DUKE: It's been marked as an exhibit for identification. We will certainly make it available to you.

THE COURT: If we can't find it, I'll ask you for it.

MR. DUKE: I would suggest -- the tape we have here is a copy of the original. The original is in the custody of the United States Attorney's Office.

THE COURT: Do I need to hear the tape in addition to reading the transcript?

MR. EDWARDS: No, your Honor.

MR. DUKE: I believe if your Honor is unwilling

to accept our assertion that the tapes conclusively prove Feffer's knowledge that Lipsky heard the deal --

THE COURT: No, I think, Mr. Duke, and I am prepared to accept that.

MR. EDWARDS: I take it your Honor means you are prepared to accept it for the purposes of ruling on the motion. I take it you are not saying you accept it as a fact?

THE COURT: That's right. I should say I am prepared to assume that.

I think I will take the time to read the transcript. I obviously can't do it right now. Can we move on to something else?

Before we move on, the thing that I'm confused about is what is the relationship between your offer of proof at the end of the day yesterday and the point we have been discussing now for the last half-hour?

MR. DUKE: I will be happy to enlarge on that.

May I simply say one other thing on the first point? If what I have been talking about is ruled out, we are stuck with having only Lipsky's testimony that his attorney told him he had a deal. That is not the same thing as an Assistant United States Attorney telling him he had a deal.

Now, I think we are entitled to elicit that without impugning any integrity, if the impugning of Feffer's integrity is ruled out. It seems to me since there is no testimony that I know of that Feffer elicited any of this testimony, it seems to me we ought to be able to inquire of Lipsky, did he hear Mr. Feffer say to Mr. Gwinn anything that comes out of your mouth, you won't be prosecuted for. Simply to nail down that Lipsky did commit perjury.

MR. EDWARDS: Your Honor, your Honor, may I say it is not necessary, and it is very obviously not necessary to go into that to nail down the fact that Lipsky was not telling the truth in those trials concerning his arrangements with the Government.

Number two, these tapes in question -- it is his lawyer who on these tapes tells him of the arrangement.

And, number three, in reality, the only purpose that could be served by these inquiries concerning what somebody overheard when there were a lot of people in Feffer's office and various conversations were going on more or less simultaneously and who heard what, while he was talking to a lawyer over the telephone, the only purpose that can be served by this is to try and interject into the trial the very issue that is collateral to it.

A trial of Mr. Feffer will not serve the administration of justice in any way whatsoever in determining whether Pacelli killed Patsy Parks.

THE COURT: Let me get back to Mr. Duke for a moment.

Can you straighten me out on your offer of proof?

MR. DUKE: On the matter that was raised last night?

THE COURT: Yes.

MR. DUKE: Your Honor, what I intend to elicit there is his false testimony caused a mistrial and a vacation of the conviction. He blamed the prosecutors. He said they were -- it was their own inadequate preparation of him. That's in the Morvillo letter.

THE COURT: Is this waht you mean by the Morvillo letter, Lipsky's letter to Morvillo?

MR. DUKE: Yes.

They failed to prepare him properly.

Then we also, along that line, simply intend to elicit two cases in which he was a Government witness there were reversals, without going into why there were reversals, and that Lipsky writes to Morvillo and says what -- in effect, Phillips is incompetent or other people in the office are incompetent. Certainly we are not offering

those remarks as the truth of the matter. Quite the contrary, that they exhibit his consistent pathological need to blame everybody else.

THE COURT: As I understand it, Mr. Edwards, you had a proposal as to how we would deal with this letter?

MR. EDWARDS: I think so, your Honor. May I look at it for a moment? I am sorry.

THE COURT: Here you are.

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MR. DUKE: In rereading this letter, this doesn't seem to be the letter in which he blames Mr. Gross for the mistrial.

MR. EDWARDS: Oh, yes, he does.

THE COURT: Down at the bottom of the first page perhaps.

MR. DUKE: "I was not spoken to beforehand."

THE COURT: At the top of page 2 you're talking about?

MR. DUKE: If you rule out the matter we were talking about before, I would simply propose to ask him if he didn't write a letter to Morvillo and tell Morvillo in words and substance that it was the fault of the prosecutors who tried those two cases in that they didn't prepare him properly.

MR. EDWARDS: Your Honor, what I would propose to do is to offer the entire letter in evidence, and, as I say, I think he is entitled to cross-examine on it, as long as he does not intend to raise the collateral issue of the knowledge of Mr. Feffer or Mr. Gross.

THE COURT: No, I am not going to permit that. I will permit cross-examination on this letter, but I think the letter ought to be in evidence.

MR. DUKE: I think putting this letter in evidence

would be grossly prejudicial to the defendant.

THE COURT: Why?

MR. DUKE: Because it discloses that the prior trials were against Pacelli.

MR. EDWARDS: I think we already know that.

MR. DUKE: No, we don't.

MR. EDWARDS: I would be prepared to mask out certain words, but the reason I have to put it in evidence, if there is cross-examination on it, your Honor, is that--

THE COURT: It seems to me it's hard to deal with this letter in bits and pieces.

MR. EDWARDS: Yes, it seems to me it has to be in evidence.

THE COURT: What would you mask out?

MR. EDWARDS: Well, maybe the word "Pacelli." I don't know of certain. Here on the first page I have no objection to masking out the word "Pacelli" as it appears in the second line from the bottom of page 1.

THE COURT: The second line from the bottom?

MR. WALL: Your Honor, that is a typewritten version.

MR. EDWARDS: I'm sorry, I have a handwritten version.

THE COURT: It seems to me the portions of the third

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full paragraph ought to be totally taken out, perhaps the second sentence of the third full paragraph, beginning with the word "against," and the third sentence of the third full paragraph, also begining with the word "again."

MR. EDWARDS: I fear I am not following too well.

THE COURT: Do you want to look over my shoulder?

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MR. EDWARDS: Thank you, your Honor.

THE COURT: What I am suggesting, deleting beginning here and here in those two sentences (indicating).

MR. EDWARDS: That is certainly satisfactory to me.

THE COURT: I don't know whether Pacelli appears again. In the fifth full paragraph we will delete the words begining with the word "against."

I don't know what you would do with this one. I am now looking at the seventh full paragraph.

MR. EDWARDS: I would recommend knocking out the sentence which reads as follows --

THE COURT: Beginning "I don't know"?

MR. EDWARDS: Yes, concerning Mr. Castellano and whether he is taking Pacelli's money.

THE COURT: What about the next sentence?

MR. EDWARDS: Yes, I would recommend knocking it out, because it is unintelligible, unless it refers back to the Castellano thing.

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MR. DUKE: I don't think the letter can be redacted.

THE COURT: It does seem to me this letter can't be used in part. It's got to be either totally or not, except I am willing to accede to your suggestion that we take out reference to Pacelli so that we don't disclose through this letter that he was involved as a defendant in these other cases.

There is another way of going about it, of course, Mr. Duke, and that is not to use the letter at all, just to ask the witness questions. You can do it that way, too.

MR. DUKE: Could I ask him if he told Morvillo something, if he told Morvillo that it was the prosecutors' fault in that they didn't prepare him properly?

THE COURT: Yes, I would suppose so, because that is the thrust of this letter.

MR. EDWARDS: I will then have to put this is in on redirect, it seems to me, the portions where he is saying to Morvillo that he has told the truth and only the truth and that he was confused and so forth and so on.

MR. DUKE: I don't think I will have any objection to that line of questioning.

THE COURT: Then we will delete from the letter the portions that we have now been talking about?

mmh5

MR. DUKE: I suggest we keep the letter out of evidence entirely, that I ask a couple of questions, and then Mr. Edwards ask a couple of questions.

MR. EDWARDS: That is satisfactory to me. Mr. Duke is simply going to inquire whether he blamed it on the prosecutors and said they didn't prepare him.

THE COURT: Then you will question him as to whether he told the truth?

MR. DUKE: That he told the truth or that he said he did.

MR. EDWARDS: Of course.

THE COURT:Now, can we go to the jury?

MR. DUKE: I have a number of other matters, your Honor. I don't think they will take too long.

THE COURT: Before we leave this, I will read this transcript. If it persuades me to change my mind I will let you know. But at the moment my mind is not changed.

MR. EDWARDS: Can I say one thing again, and this is not because of a ruling on the motion, it is because of my own concern for the reputation of a member of our office. I think it's fair to say that if you read that transcript as if it were a trust indenture or some other written memorialized document in which every word is to be weighed and studied, it reads as if Feffer probably realized at the

time that Gwinn was passing these assurances on to his client, and just for your Honor's information I would like to point out that it was an arrangement of a type that has been made in the past in other cases that we have put an end to, I think, one that was exceedingly unwise, although not improper as a matter of law. An arrangement was made where Feffer was telling the attorney that his client was not going to be prosecuted, but his understanding was that the lawyer was not going to pass this along to the client. This would have two effects: Since the client wouldn't know that he had this guarantee, the fact that he had it would be irrelevant to his cross-examination. There is another consideration, that as long as he knows he has no guarantee, it heightens his motivation to provide truthful information. In any event, this sort of arrangement was made. My understanding is that at the time those conversations were going on on that tape there were numerous other persons in Feffer's office, including a number of narcotics agents who were engaged in interviewing Lipsky concerning totally separate cases, and not the one that Feffer was working on at all. There was a handing of the phone back and forth. Feffer was not listening to Lipsky while he was on the phone with his attorney, because he didn't wish to listen to Lipsky talking to his attorney, which could

mmh7

be understood, and what was occurring was a fleeting oral conversation over the telephone just prior to Feffer taking Lipsky up before the grand jury.

Feffer had been in the office for around a half a year at the time. Feffer should never have been assigned to a case of this complexity. It was a fault of the office management. The case mushroomed from a simple case into a complex case, and Feffer was left on it, although he had almost no experience. He, Feffer, had never put a witness of the Lipsky type before the grand jury, never had anything to do with a witness of Lipsky's type. He was talking with Gwinn on the telephone and was going to take Lipsy up to the 14th floor to put him in front of the jury. He was not reviewing a trust indenture, which is the analogy I used, or anything of the kind, and, consequently, was not focusing upon the fact that Gwinn was in the conversation with his own client apparently departing from the understanding that Feffer had earlier with him. I lay this on the record, your Honor, not in connection with the ruling you are making; it is simply that this young man has been impugned, and we have confidence in him, and when your Honor reads those papers I just wish you to know these things.

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THE COURT: I don't think I ever read a trust indenture and I hope I never have to.

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MR. DUKE: I think when you read this, your Honor, you will find that Mr. Gwinn tells Mr. Feffer that he has just told Barry Lipsky about the deal.

THE COURT: You said you had a few more points?

MR. DUKE: Yes. I would like to renew the motion made pre-trial for a psychiatric examination of Lipsky. I advise the court that we have had a distinguished psychiatrist in the courtroom during all of Lipsky's testimony, and that not only the testimony elicited, but Lipsky's demeanor clearly indicates that -- and I will be happy to put in the affidavits in support of it -- that the pre-trial motion did not come close to suggesting the seriousness of this man's mental condition. Our preliminary and very tentative discussions with our psychiatrist suggest that in his opinion Mr. Lipsky is a psychopath, a pathological liar, an egomaniac, and he, for example, would very much like to explore with Lipsky his nightmares and the nature of his nightmares that are referred to in the psychiatric report of the doctors in Nassau County. The court has ruled out my questions along those lines. It seems to me that the case is about as compelling as a case could be given the fact, if it is a fact, Lipsky has testified that he has not seen a psychiatrist since December of 1972. It seems to me just overwhelming that a psychiatric examination is needed

mmh9

in this case to determine whether this man is capable of telling the truth, and that would go not only to his credibility, but to his competence.

THE COURT: I have done a little thinking about this and a little research and it seems to me that you have not made out a good enough case. I am going to deny your motion.

MR. DUKE: I would like to renew the pre-trial motion -- perhaps two of them -- to disqualify Lipsky as an incompetent witness.

THE COURT: At least in part for the same reasons I will deny that motion.

MR. DUKE: Your Honor, I would like, if possible, to inquire whether the government witnesses will continue to be available to be called by the defense, if necessary.

MR. EDWARDS: Could you specify whojm, because some of the witnesses, your Honor, have had to be arrested -- at least one of them -- in order to secure their presence here. They are not particularly tractable people. You notify us in advance.

THE COURT: Are you talking about Lipsky as one?

MR. DUKE: At this point he is the only one I have in mind.

THE COURT: Certainly, I am sure the government

can make him available.

MR. DUKE: We have an understanding then if I tell you shortly after the testimony.

MR. EDWARDS: Yes.

THE COURT: May we leave it, Mr. Edwards, that he will be in touch with you later on and if there is a problem we will discuss it.

MR. EDWARDS: Yes, your Honor, I think he ought to let us know.

THE COURT: You should have advance notice.

MR. EDWARDS: As to any witness he wishes held in reserve somehow he should let us know at the conclusion of the witness' testimony before he leaves the courthouse.

THE COURT: Yes, I think that is right.

MR. EDWARDS: They never may be seen again.

MR. DUKE: The other thing, your Honor, I think I should tell you in advance that I propose to inquire of Lipsky about his having testified on a prior occasion in a trial in which Louis Valentine was a defendant that he made a narcotics move out of the Yellow Fingers Restaurant and that Pacelli was there during that move.

THE COURT: Move?

MR. DUKE: Well, simply, that he testified that he --

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THE COURT: I just don't know what you mean by "move."

MR. DUKE: I am not sure that I know, either, that he and Pacelli were having dinner at the Yellow Fingers Restaurant, they met Louis Valentine there. Pacelli directed, or, in any event, Lipsky left there and went to his apartment, got some cocaine, put it in Valentine's car, returned to the Yellow Fingers. Pacelli and Valentine were still there. He gave keys to the car to one or the other of them, on September 28, 1971. The purpose of that testimony will be that it was testimony the government offered in another case by a now deceased narcotics agent, that he was surveilling Lipsky that night, that he saw Valentine and Lipsky meet in the Yellow Fingers, he saw the whole thing.

THE COURT: I don't understand the purpose.

MR. DUKE: Pacelli wasn't there is the purpose of it.

THE COURT: Pacelli wasn't there?

MR. DUKE: Wasn't there.

THE COURT: And Lipsky testified he was?

MR. DUKE: Yes.

THE COURT: How are you going to show that Pacelli wasn't there?

MR. DUKE: By the testimony of the deceased officer describing who he saw and what happened. The purpose is to

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show --

THE COURT: I understand your purpose. I will take this as an offer of proof. I will not permit examination on that point. It seems to me it is so remote, so basically irrelevant that I won't permit it.

MR. DUKE: Your Honor, what it shows is that in December of 1972 Lipsky falsely and perjuriously implicated Pacelli in a criminal offense.

THE COURT: Yes, I understand your point.

MR. EDWARDS: May I inquire on the record on that, your Honor?

THE COURT: Yes.

MR. EDWARDS: Did this surveillance agent who says he saw this thing and did not see Pacelli, did he say that he knew Pacelli when he saw him, that he was familiar with Pacelli and acquainted with him appearance?

MR. DUKE: He didn't mention Pacelli. He described who he saw in the restaurant and what they were doing.

MR. EDWARDS: He did not say he was familiar with Pacelli's physical appearance and would have seen him had he been there? He said no such thing?

MR. DUKE: He said he saw two men, Lipsky and Louis Valentine.

MR. EDWARDS: Did he say the restaurant was totally empty except for those two men?

MR. DUKE: No. But Lipsky will testify the restaurant has huge picture windows in front of it and you can easily see in and out of the restaurant. From the restaurant you can see who is inside.

MR. EDWARDS: Well, I think I have asked the questions I wanted to ask.

THE COURT: Anything else?

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MR. DUKE: One final matter, your Honor, left over from the other day. We would like to make an offer of proof of Exhibit, Defense Exhibit E for identification, R for identification, S for identification, and T for identification, all of which are -- we offered the entire letter earlier. I believe we did. In any event we offer it now. E for identification begins "Affidavit relating to Lipsky's mental condition," and R --

THE COURT: Affidavit in what proceeding?

MR. DUKE: In the Nassau County proceeding. Affidavit by which he obtained a competency examination.

S for identification and T for identification are all communications by Gwinn. One is to the warden -- two are to the warden in Nassau County. One is to Frank Dillon, Assistant United States Attorney, in which Mr. Gwinn asserts that Lipsky's mental condition is very bad, is deterioriating and something ought to be done about it, and we offer these as statements by Lipsky's agent made with his full authority and --

THE COURT: Mr. Edwards?

MR. EDWARDS: Your Honor, it seems to me these have been offered and rejected in the past.

Mr. Lipsky's testimony was that although he knew a motion was being made, he knew nothing concerning an

3 lzmch

affidavit and there is obviously no foundation laid for saying that Lipsky was contending that he, Lipsky, was mentally deranged or anything along those lines. I believe that was the grounds your Honor ruled all this out in the past. It's just plain hearsay from his lawyer.

I may say that in this connection, well, the other letters are -- fall into the same category. They are just hearsay claims by Gwinn. It's crystal clear to anyone familiar with criminal cases that any defense attorney defending Lipsky in Nassau County in a case where Lipsky had confessed to a murder and where they were refusing to reduce it to manslaughter would endeavor to see if he could raise a competency issue. There can be absolutely no other defense that Lipsky could raise and, of course, he sought a competency hearing. I suppose I would have sought one, too. I don't think it proves anything at all.

THE COURT: Your offer of proof is to establish the truth of these matters asserted?

MR. DUKE: Yes.

THE COURT: All right. Do you want to leave those with me? I don't think I will change my mind.

Thank you very much.

(In open court; jury present)

THE COURT: I just handed to my clerk, Mr. Duke,

the papers that you gave me a few minutes ago, and I haven't changed my mind.

Ladies and gentlemen, I am sorry we kept you waiting once again. I had some matters that I had to discuss with the lawyers, legal matters. It took longer than I thought we would. I am sorry we kept you waiting.

All right, do we have a witness?

B A R R Y G. L I P S K Y, resumed.

CONTINUED CROSS-EXAMINATION

BY MR. DUKE:

Q Mr. Lipsky, did you, in connection with your activities in the narcotics business, take to the bank one or two or more thousands of dollars in five or ten dollar bills and exchange them for fifties and hundreds?

MR. EDWARDS: Objection, your Honor. I think this was asked and answered.

THE COURT: Sustained.

Q Mr. Lipsky, did you take that money and did you change that money at a bank at 57th Street and Madison Avenue?

MR. EDWARDS: Your Honor, could we have the time fixed?

THE COURT: Yes.

Q Did you change any money from the narcotics

business at 57th and Madison Avenue before the summer of 1971?

A I may have. I don't recall the exact incident.

Q Did you change any money at that bank that wasn't narcotics money?

MR. EDWARDS: Objection, your Honor. He says he has no memory.

THE COURT: Yes, he said he doesn't recall that episode.

Q Did you change any money at a bank at 57th and Madison?

MR. EDWARDS: Objection, your Honor.

THE COURT: Sustained.

Q Did you change any money with a woman named Mrs. Keenan?

MR. EDWARDS: Objection, your Honor.

THE COURT: Sustained.

THE COURT: I don't see any need to pursue this line any further, Mr. Duke.

MR. DUKE: Your Honor, I think it's essential to the defense.

THE COURT: Well, you will have to tell me.

(At the side bar)

MR. DUKE: Your Honor, this man has testified that

he went to work for Pacelli in the narcotics business in April of 1971 or at least after Easter 1971. His claim is, I believe the record shows his claim is, in any event I would like to clarify, his claim is he was never in the narcotics business before that. He did, in fact, and will so testify, that he, as part of his activities with the narcotics business, was to change the small bills into large bills and he did it at 57th and Madison, and that he didn't do it, I believe he will testify that he never did that at that bank except when he was in the narcotics business with Pacelli, which would be sometime after, on or after April 1971. He already said it was about May, no earlier than May 1971, and I intend to prove through Mrs. Keenan that he was changing money, small bills into large bills, a thousand, two thousand dollars, as early as 1968.

MR. EDWARDS: Well, your Honor, as I recall the cross-examination that's already occurred, Lipsky has testified that he may have changed some bills during earlier years, that he does not remember the incidents at the present time, and the impression I have is that the topic has been exhausted. It just seems to me we have covered the thing.

THE COURT: Yes, I have the same impression, not

only that it has been exhausted but that it isn't particularly useful.

It seems to me,Mr. Duke, you have made it perfectly clear in your cross-examination that Lipsky has on occasions in the past lied. And I don't think we need to go ahead with this.

MR. DUKE: Your Honor, my two ways of proving that he lied with respect to Pacelli is the Yellow Fingers thing, which you ruled out, and this money thing.

MR. EDWARDS: I don't understand the relevance of this because if Lipsky changed narcotics money in 1968 --

THE COURT: He didn't know Pacelli at that time.

MR. EDWARDS: I know. It might well contradict his testimony that he was not in the narcotics business until he met Pacelli. I think that's true. And maybe that has some relevance.

My point, however,is that he has already been asked whether he was changing small bills into large in 1968. He said he doesn't remember the incident. I think we have had a lot of questions on that subject, and I don't know what Mr. Duke can ask him that he hasn't already asked him.

MR. DUKE: He will necessarily testify, if I can get him to answer the question, he will necessarily testify,

if he is going to be consistent, that if he changed bills prior to May of 1971, it had nothing to do with narcotics.

MR. EDWARDS: I think he has already testified that he may have cashed bills earlier and that he was not in the narcotics business earlier.

Accordingly, I take i his testimony is that although he doesn't remember, he may have changed some bills in 1968 that had to do with something other than narcotics. It seems to me that's the thrust of the testimony that's come out of a fairly lengthy cross-examination.

MR. DUKE: I think if pursued he will say that he didn't on any regular basis, consistent basis, take in these quantities of bills to be changed prior to May 1971.

MR. EDWARDS: It seems to me it's been covered.

THE COURT: Well, is it your point, Mr. Duke, that you intend to put on Mrs. Keenan?

MR. DUKE: Yes.

MR. EDWARDS: Your Honor, I don't know, I may oppose him putting her on on the grounds --

THE COURT: You what?

MR. EDWARDS: I may oppose him calling Mrs. Keenan on collateral matters. He is required to take the witness' answer and not put in proof to the contrary.

THE COURT: The difficulty with that, Mr. Edwards, is that Mr. Duke tells me now that he hasn't asked all the questions he wants to.

MR. EDWARDS: All right, your Honor. May I simply request that Mr. Duke be required to wind up this matter by asking the pertinent questions that are involved, and I would not think it would be more than two or three.

MR. DUKE: Your Honor, if the witness would answer a question, it would take two or three.

MR. EDWARDS: He answered every single question you asked him.

THE COURT: You know my view, Mr. Duke. I think we are getting way out here. I will permit you to ask one or two more questions. If you can't nail it down in that time, I'll cut you off.

(In open court)

Q Mr. Lipsky, would you give the jury and the Court your best recollection concerning whether or not prior to the spring of 1971 you ever changed a large number, a substantial number of small-denomination bills into larger denominations at a bank?

MR. EDWARDS: Objection, your Honor. The words "substantial" and "large" are not clear and should be defined.

THE COURT: Well, I'll permit the question.

A Your question was if I ever changed on one occasion?

Q What is your best recollection? Do you have a recollection of ever having done that before the late spring of 1971?

A In New York City?

Q In New York City.

A I may have, but I don't recall doing so, but I may have.

As I have told you, I don't recall doing so.

Q Did you have any job, any employment or business prior to the spring of 1971 that would have required, or would have involved changing small bills into large bills?

MR. EDWARDS: Objection, your Honor.

THE COURT: I'll allow it.

A What year, Mr. Duke?

Q 1971.

THE COURT: Prior to 1971, is that right? Did you say prior to 1971?

MR. DUKE: Prior to spring of 1971.

A In New York City?

Q Yes.

A I don't remember having any job in New York City

prior to 1971 where I would -- whereby I was required or had occasion to change large -- small money into large-denomination money, Mr. Duke, but I may have done so, but I don't recall doing so.

Q Mr. Lipsky, when you threw the knife in the water, how deep did the water appear to be where you threw the knife?

A Out where I threw the knife, where it landed, you mean?

Q Yes.

A I don't know. It didn't appear to be too deep.

Q Can you give an estimate, a rough estimate?

A Maybe 5 to 10 feet. I couldn't tell.

Q Could you see the bottom?

A No, Mr. Duke, I could only see the top of the water.

Q Was Mr. Pacelli's car on the night of February 3rd, was his car parked in the parking lot next to the apartment house?

A The night of February 3rd?

Q The morning of February 4th.

A Are you talking about after we came back from --

Q No.

Q When are you talking about?

Q When you went out to New Rochelle to the Pacelli apartment the first time, was the car, Pacelli's car, parked in the parking lot next to the apartment house?

A Yes.

Q Is there an attendant in that parking lot?

A There is not. There was not.

Q Is it locked up?

A No, it's just an open parking lot.

Q It's just a flat piece of ground?

A That's correct.

Q Mr. Lipsky, you are a Government informer, aren't you?

A I am a Government witness, Mr. Duke.

Q Are you a Government informer?

A What do you mean by "Government informer"?

Q Did you tell your attorney on March 7, 1973 that you were a Government witness and informer?

MR. EDWARDS: Objection, your Honor; has no relevance.

THE COURT: Sustained.

Q Did you begin giving information to the law enforcement authorities concerning the violations of law by other people on October 28, 1971?

MR. EDWARDS: Objection, your Honor.

THE COURT: Sustained.

Q Have you in the past provided information to the Government concerning the violation of law?

MR. EDWARDS: Objection, your Honor. We have covered all this.

THE COURT: Yes, I think so, Mr. Duke.

Q Mr. Lipsky, your false testimony in December of 1972 and June of 1972 resulted in a mistrial in one of those cases, did it not?

A Yes, I think it did.

Q And the conviction in the other case was vacated?

A Yes, I think so.

Q And both events occurred as a result of your false testimony?

MR. EDWARDS: Objection, your Honor. We have covered that.

THE COURT: Sustained.

Q Did you blame that on the prosecutors that were prosecuting those cases?

A Yes.

Q You didn't think they did their jobs competently?

A In one case --

THE WITNESS: May I explain, your Honor?

Q Just answer the question.

THE COURT: No, I think you ought to just answer the question.

A In one case -- may I hear your question, please?

Q You didn't think the prosecutors in those cases did their jobs competently?

A In one case, that's correct.

Q Was it also the prosecutor's fault in the other case?

MR. EDWARDS: Objection, your Honor. I don't see the relevance.

THE COURT: I agree. I sustain the objection.

Q You were very concerned, weren't you, Mr. Lipsky, that the prosecutors in the Southern District would blame you for causing that mistrial and that vacated conviction, weren't you?

A Yes.

Q And you suffered great mental anxiety over that prospect?

THE COURT: Well, Mr. Duke, I don't think we need that question.

Q And, Mr. Lipsky, did you also testify in two other trials in which the convictions were reversed by the Court of Appeals?

MR. EDWARDS: Objection, your Honor.

THE COURT: Sustained.

MR. EDWARDS: Your Honor, may we approach?

THE COURT: Yes.

(At the side bar)

MR. EDWARDS: Your Honor, I mean no personal impugning of the defense attorney when I say this. I simply say that that last question is totally outside anything that we covered that was going to be inquired into in this area. I'm simply asking for one thing. I'm asking for your Honor, here and now, to tell the jury that that question was an entirely improper question and they should pay no attention to it and draw no conclusion from it whatsoever, the last preceding question.

MR. DUKE: Your Honor, I think on the contrary there has been apparently a great misunderstanding. I indicated this morning that I intended to elicit that for the purpose, for the sole purpose of showing that Lipsky then blamed the prosecutors of thsoe cases and said they were incompetent --

MR. EDWARDS: It is completely irrelevant.

THE COURT: Well, I don't know about that, Mr. Duke. It is not my recollection that the reversal points by the Court of Appeals have been discussed. If it has, I have forgotten it. I think it is irrelevant.

I would be glad to make the statement that you suggested, Mr. Edwards, to the jury. I really wonder whether it's necessary. If you want me to, I would.

MR. EDWARDS: I am requesting it, your Honor. I am not requesting that counsel be castigated. The last question was totally irrelevant and they should pay no attention to it.

MR. O'DONNELL: Your Honor, can't we just tell the jury to disregard the question? Anything more than that would be impugning defense counsel.

THE COURT: No.

(In open court)

THE COURT: Ladies and gentlemen, the last question, as you know, was objected to and I sustained the objection because in my view the question was irrelevant. You will disregard the question and draw no inferences from it.

All right.

Q Mr. Lipsky, was Patsy Parks the only girl you murdered?

A Excuse me?

Q Was Patsy Parks the only girl you murdered?

A She was the only person I ever had anything to do with the murder of.

MR. EDWARDS: Your Honor, could we approach on this?

THE COURT: Yes.

(At the side bar)

MR. EDWARDS: Your Honor, I really think that unless Mr. Duke has some pretty specific good-faith basis for asking that question, that that is an utterly outrageous question, and if he has no proof or no evidence pointing toward another murder by Lipsky, I think I am entitled to have your Honor instruct the jury that counsel had no basis for asking the question and they should disregard it because this is outrageous.

MR. DUKE: Quit arguing to the jury.

Your Honor, in the first place, I didn't suggest he murdered anybody else, but I have in Mr. Lipsky's own hand to his lawyer, Mr. Gwinn, a statement that the Nassau County police accused him of several other murders, and I think that justifies some inquiry.

THE COURT: No, I don't think it does.

MR. EDWARDS: I think I am entitled to some relief on this, your Honor.

THE COURT: Yes.

(In open court)

THE COURT: Ladies and gentlemen, the question

you have just heard, you may not assume, and you will not assume or infer from that question that Mr. Duke had any basis for thinking that there were any other murders involved.

You will take the question as relating only to the matter which is before you. You will regard no inferences. You will not take it into account in any way with respect to any other matters.

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MR. EDWARDS: Your Honor, I am asking further that the question and answer be stricken from the record as being without basis.

THE COURT: Yes, you will strike the question and answer out of your mind completely.

Do you have anything else?

MR. DUKE: Your Honor, I think I better approach the side bar.

THE COURT: Is it a matter we discussed before?

MR. DUKE: No, we have not discussed it.

THE COURT: All right.

(At the side bar.)

MR. DUKE: Since I know that this question will produce a side bar conference and the court might well feel it is improper, I would like to state that I would like to inquire of Lipsky whether or not on or about January of 1972 he suggested that in connection with the illegal activity of a friend of his, Bruce Gordon, that two witnesses be buried.

MR. EDWARDS: I object to this, your Honor. On the basis of the offer of proof as it has been made, I see no relevance whatsoever to anything involved in this case, no indication of what it is about, and I think it ought to be ruled out.

mmh2 Lipsky-cross

THE COURT: He suggested that somebody be burned?

MR. DUKE: I got the names and the dates, one month before Patsy Parks was burned. The relevance of it is that Lipsky is claiming that he just went along and was afraid of Lucelli and did what he was told.

THE COURT: Do you have any basis for that? What is the basis for your assertion?

MR. DUKE: I have interviewed Bruce Gordon and he told me the details of it.

THE COURT: How does Bruce Gordon know what Lipsky said?

MR. DUKE: He said it to Marge Jacklone and Bruce Gordon.

THE COURT: No, I am not going to allow this.

(In open court.)

BY MR. DUKE:

Q Mr. Lipsky, have you seen a psychiatrist since December, 1972?

MR. EDWARDS: Objection, your Honor. We have covered it.

THE COURT: Sustained.

Q Are you willing to be interviewed by a psychiatrist--

MR. EDWARDS: Objection.

THE COURT: We have gone over this.

MR. DUKE: I have no further questions.

THE COURT: We will take a five-minute recess, ladies and gentlemen.

(Recess)

MR. EDWARDS: May I proceed, your Honor?

THE COURT: Yes.

REDIRECT EXAMINATION

BY MR. EDWARDS:

Q Mr. Lipsky, you remember being asked on cross this morning whether you had blamed the reversal of one of these federal cases on someone in this office? Is that correct?

A Yes.

Q Do you remember that this was around December, 1972?

A Yes.

Q You blamed the assistant in the office who was then handling the case because he had not adequately prepared you? Is that correct?

A That is correct.

Q Was this complaint of yours in a letter sent to Mr. Morvillo, the then head of the Criminal Division in this office?

A Yes, it was.

Q Do you recall seeing in the letter:

"As I told you in your office, I did not answer

mmh4 Lipsky-redirect

Mr. Arkin's questions about alleged 'promises' made to me by your office, wrong intentionally, but only because I became confused by Mr. Arkin, and related my answers to the Nassau County murder, and as we have discussed.."

Do you recall writing that also to Mr. Morvillo?

A Yes, I do.

Q Do you recall in the same letter writing to Mr. Morvillo:

"I could go on and on telling you things you already know, but what I want to tell you here is my deep concern about my unintentional 'foul-up' in this case and my desire to only tell the complete truth as I have always done with your office."

Do you remember also writing Mr. Morvillo this?

A Yes, sir.

Q Now, in December, 1972, what was the situation at that time on your murder case in Nassau County?

A I was still under indictment for murder, sir.

Q What was happening in the case?

A My murder trial with me on trial for murder was set for January 8th, I think, a couple of weeks away.

Q Mr. Lipsky, shifting to something else you were cross-examined on, can you first tell us when it was that you left New York and went to Florida after the murder?

A Yes, I believe it was on Friday, February 11, 1972.

Q You were asked on cross-examination whether you talked to some people you knew in Florida concerning the matter. Do you remember that?

A Yes, sir.

Q Do you remember talking to a Diane Orinsky concerning the murder in Florida?

b2 A Yes, sir.

Q Is she a friend of yours?

A Yes.

Q What is it you remember saying to her concerning the murder in Florida?

MR. DUKE: Objection.

THE COURT: Overruled.

MR. DUKE: May we have a side bar?

MR. EDWARDS: Your Honor, I submit there is no necessity for a side bar.

MR. DUKE: I believe there is, your Honor.

THE COURT: All right.

(At the side bar.)

MR. WALL: Your Honor, what Mr. Edwards is about to do is to elicit from this witness that some time in Florida Lipsky implicated Pacelli in the killing of Patsy Parks. I expect also shortly he hopes to offer the Scaring

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statement which does the same, and the Bonora statement, which also implicates Pacelli.

MR. EDWARDS: That's correct.

MR. WALL: He is trying to get into evidence a prior consistent statement of this witness. My understanding of the law, your Honor, -- and the law is clear and I thought my understanding of it is -- is that prior consistent statements of a witness are admissible under certain limited circumstances, the major one of which being to refute an allegation of recent fabrication. Now I was careful when I opened this case to tell the jury we were not making any claim that it was the government's deals with Lipsky that caused him to implicate Pacelli. I made it clear, and if your Honor has my opening I can point out the very words I used -- that he went down to Florida, to the scene of his prior crime, his prior deals and his prior lying, and came back from Florida with a plan to implicate Pacelli if, as and when he, Lipsky, should be arrested and in trouble.

Secondly, and it is clear in my opening, it was our theory that this lie was concocted prior to the time he had any dealings with the government in this case. It is true that we have cross-examined Lipsky with respect to favorable treatment by the government and deals with the government. We were not cross-examining for the purpose of

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showing that with respect to the implication of Pacelli, that the lie was motivated by the deals. The main purpose for putting in that material about favorable treatment and deals was to lay a foundation to show that at a later date in other trials the man deliberately committed perjury about those deals, to show that he committed perjury and is capable of perjury, and that his credibility is suspect. We had to show that, in fact, there had been deals. We have made no claim, and I can assure you there will be no argument on summation, that the deals were with the government in order to implicate Pacelli. We do not intend to argue that on summation. We did not mention that in the opening, and not a single item of testimony in this case has been elicited to establish recent fabrication. Under those circumstances the evidence, I would suggest, is totally inadmissible.

MR. EDWARDS: Should I respond?

THE COURT: Yes.

MR. EDWARDS: In the memorandum we have filed I think it is abundantly clear that there is no requirement that the defense attorney say, "I am raising this issue." It has been injected in the case from the very beginning to the present time. There have been endless cross-examination, not only about the deals with the government, but the fact that Lipsky has committed numerous crimes for which he has

not been prosecuted, and I think one of the cases is precisely on point. Mr. Duke cross-examined Mr. Lipsky concerning whether he had been hit by someone in Nassau County prior to his confession in Nassau County, which in and of itself indicates that the confessions there with the result of coercion. The cross-examination has been endless.

THE COURT: That is enough.

MR. DUKE: Your Honor, I just think that that was not the purpose of the questions. I will stipulate that the confession was not the result of coercion. The purpose was to show the contrary.

MR. EDWARDS: They cannot change the record now.

THE COURT: Yes.

(In open court.)

MR. EDWARDS: Your Honor, can we have the last question read?

(Question read.)

MR. EDWARDS: May we have an answer?

A Yes, sir, I remember telling her about the murder in New York sketchily and what my part in it was and that this girl was killed and Pacelli killed her.

Q How soon after your arrival in Florida do you think you talked to her?

A I think it was the following afternoon after my arrival in Florida.

Q By the way, Mr. Lipsky, you were cross-examined as to whether the other afternoon when you were sitting in the witness room you were upset and you were weeping and hitting your hand on the table or something. Do you recall that?

A Yes.

Q What is it that had upset you?

MR. DUKE: Objection.

THE COURT: Overruled.

A The fact that I would be asked about killing this young lady about the murder.

Q Why should that upset you? What was your concern?

A That she is a friend of mine and I didn't want to see her get involved in this matter.

Q Now, Mr. Lipsky, after you talked to her do you recall having a conversation with another young woman named Diane Caine in Florida?

A Yes.

Q Who is she?

A She was at that time a girlfriend of my best friend, Alan Harris.

Q When did you have this conversation with her in

Florida?

A A few nights, I believe, after I had the first conversation with the first young lady.

Q Now, the conversaton with Diane Caine, what is your best memory concerning what you said to her?

MR. DUKE: Same objection, your Honor.

THE COURT: Overruled.

A I believe I told her sketchily that I had been involved in this murder in New York with someone and I believe I told her who and what had happened and I was upset about it.

Q Are you positive whether or not you told who the other person involved in the murder was?

A I'm not positve, but I think I did. I'm not sure.

Q Mr. Lipsky, did you also have a conversation in Florida with a person named Harris?

A Yes.

Q What is the first name of Harris?

A Alan Harris.

Q Who is he?

A He was my best friend and he was the boyfriend of Diane Caine and he lived at her apartment and I was staying there with them.

Q What do you remember as to the contents of your

conversation with him?

MR. DUKE: Same objection, your Honor.

THE COURT: Same ruling.

A I remember talking to himon one occasion telling him what had happened in New York concerning the murder and my involvement in it, and I believe I told him on a separate occasion a night or so following this same story about the murder, and I don't remember how much detail I told him about it, but I did tell him about my involvement in helping another person kill this girl

Q Do you recall a conversation with Margie Jacklone in Florida on this subject?

A Yes, I do.

Q To the best of your memory, when did this conversation take place in relation to the conversations in Florida that we have already covered?

A To the best of my memory, the conversation with Margie Jacklone took place after the first three conversations with the first three people I mentioned, and it came within three or four or five days after I was in Florida, when Margie Jacklone came to Florida from New York with her son.

Q What do you remember concerning the contents of your conversation with Margie Jacklone?

A I remember speaking to Margie Jacklone --

MR. DUKE: Same objection, your Honor.

THE COURT: All right. Overruled.

A I remember speaking to Margie Jacklone and she was telling me -- I remember talking to her and telling her -- she was telling me that, I believe, that the police had been to see her and were talking to her about Patsy Parks and her disappearance, and then I told Margie Jacklone what happened to Patsy Parks, and that I was with Pacelli when he killed her, and Margie Jacklone said, "Why

did he have to use a knife? Why couldn't he have used a gun?"

Q Do you remember anything further concerning that conversation?

MR. WALL: Excuse me, your Honor. I'll object to anything Miss Jacklone said. I ask the last remark be stricken.

MR. EDWARDS: I have no objection to that.

THE COURT: All right. We will strike that.

Q Do you remember anything further you said to her in that conversation? We are not interested in her remarks.

A I remember telling her in detail how the murder occurred and that Pacelli killed Patsy Parks.

Q Mr. Lipsky, were these things you told your acquaintances in Florida concerning the murder true?

A They were.

Q I think you testified on cross-examination that when you were in Florida, you knew you were in trouble in connection with the murder; is that correct?

A Yes.

Q What trouble is it that you thought you were in?

MR. DUKE: Objection, your Honor.

THE COURT: Overruled.

A I knew what I had done. I knew what I had been a part of, and I was reading about it in the paper, and it was on my mind. It was on my mind what I had done with Pacelli, and I thought I was going to be questioned --

Q Mr. Lipsky, did you know of any evidence concerning yourself that anyone had at that time?

A None other than the fact that I was in the Hippopotamus that night.

Q Mr. Lipsky, there came a time, I take it, on March 2nd, that you returned to New York; is that correct?

A That is correct.

Q On that same night you were taken to a police station of some kind in Mineola, Long Island; is that correct?

A That's correct.

Q After you were there for awhile, you provided a written account of the Parks murder to a Sergeant Bonora; is that correct?

A That is correct.

Q Before Sergeant Bonora arrived there at the police station, did you have a conversation concerning the murder with a couple of other law enforcement officers?

A Yes.

Q What were you trying to tell them concerning the

Parks murder?

MR. WALL: Same objection, your Honor.

THE COURT: Overruled.

A I was telling them that I didn't have anything to do with it, and I had made up a story.

Q What was the story you made up and told them?

A They asked me where I was on the night of the murder, and I told them I was in the Hippopotamus and as I recall I told them I went out to a newsstand on 53rd Street and got a newspaper, and went back to the Hippopotamus and went down to the men's room and I was reading the newspaper about the National Football League player draft. I stayed around the Hippopotamus until it closed, and I took a cab home to my apartment.

Q Was this account you were relating to them before the arrival of Sergeant Bonora true?

A No, it was a lie.

Q Did these police officers indicate, in some words or other, whether or not they believed you?

A Yes.

Q What did they indicate to you?

A That they thought I was lying.

Q Did they tell you any reason why they thought you were lying? Anything specific that you can recall?

A I don't recall anything specific they told me.

Q They just indicated that they thought you were lying?

A That's correct.

Q Thereafter, you say you provided this written account of the murder to Sergeant Bonora; is that correct?

A That is correct.

Q Insofar as the facts concerning the Parks murder are concerned, was that written account true?

A Yes, it was.

Q Did you, however, in giving that written account, leave certain persons out of that account?

A Yes, I did.

Q Who did you leave out?

A Al Bracer, Ida Bracer, and Manny Bayron.

Q Why did you leave out Al Bracer and Ida Bracer?

A Because Al Bracer was a partner of Pacelli's in the narcotics business and Ida Bracer was his wife.

Q Well, so what? Why did you leave them out?

A I was making a confession about a murder to Nassau County. I thought I was in enough trouble already without opening another door to a narcotics involvement.

Q After giving this written account to Sergeant Bonora, did there come a time that same evening when you

met an Assistant District Attorney for Nassau County?

A Yes.

Q And do you recall his name?

A Steven Scaring.

Q Was there a stenographer in the room while you were talking to him?

A Yes.

Q Did the stenographer take down the questions that the Assistant District Attorney asked you and the answers that you gave?

A Yes.

Q Have you reviewed in the past the written Q & A that resulted from that interview?

A Yes, I have.

Q Was that written Q & A also an account of the Parks murder?

A Yes, it was.

Q Insofar as the facts concerning the murder are concerned, were your answers reported in that Q & A truthful?

A Yes, they were.

Q Now, did you leave anybody out of your answers during the Q & A?

A Yes, I did.

Q Who did you leave out?

A Al Bracer, Ida Bracer and Manny Bayron.

Q Why did you leave the Bracers out?

A Because Al Bracer was one of Pacelli's narcotics partners. Ida Bracer was his wife. And Manny Bayron at one time worked with me for Pacelli in the narcotics business.

Q Why, again, did that cause you to leave them out?

A Because I was confessing to my part in a murder, and I didn't want to have additional -- open new doors to additional prosecution for narcotics violations.

Q Do you remember that when the Assistant District Attorney was questioning you --

A I'm sorry?

Q I say, do you remember that when the Assistant District Attorney was questioning you, he asked you, in substance or effect, whether you had any involvement with Pacelli in criminal activity that would explain why you would be willing to go along with him on this murder and why he would take you along?

A I remember him asking me that.

Q Do you remember that you denied having any criminal involvement with Pacelli as you explained that situation?

A Yes.

Q And was your denial truthful?

MR. EDWARDS: Well, withdrawn.

Q Had you had a prior criminal involvement with Pacelli?

A Yes.

Q What was the nature of the prior criminal involvement?

A I worked for him in the narcotics business.

Q And why did you deny to the Assistant District Attorney that that was the fact?

A Because I didn't want to open any new doors to any narcotics prosecution against me while I was confessing to my part in a murder.

Q By the way, Mr. Lipsky, in your written statement to Sergeant Bonora,you did, did you not, mention that Abby Perez was in the Pacelli apartment when you and Pacelli returned from the murder?

A Yes.

Q And you have testified, have you not, that Abby Perez was Pacelli's other narcotics partner; is that correct?

A That is correct.

Q Do you know why you mentioned him although you

left Bracer and his wife out?

A Yes.

Q Why do you think that?

A When I was giving the statement to Sergeant Bonora, I believe, or Mr.Scaring, I was talking about when Pacelli and I returned from cleaning the car to the apartment and I was telling one of the officers or Mr. Scaring of who was in the apartment.

They asked me who was in the apartment and I was telling them and I put -- I said Abby Perez was downstairs sleeping. Once I had said Perez and mentioned his name, I knew I couldn't take him back out of the picture. I hadn't mentioned his name up to that point, but once having slipped and put his name in, I didn't think I could take him out.

Q Well now, Mr. Lipsky, after your interviews that evening with the police and then the Assistant District Attorney, did there come a time when you did begin talking about your knowledge of narcotics activities to somebody in law enforcement?

A Yes.

Q When was the first time, to your memory, that you began talking to people in law enforcement concerning your knowledge of narcotics activities?

A Sometime after I gave the statement to Mr. Scaring or the next afternoon, meaning March 3rd. Sometime on March 3rd, I believe.

Q And who were you talking to when you began to give this narcotics information?

A I'm not sure. I think Sergeant Bonora was there and other officers. I think there was a Captain Godsman there and some other officers. I am not exactly sure.

Q When you talked to the Nassau County people, do you remember how much detail you went into on your knowledge of narcotics?

A No, I don't actually remember how much detail I went into with them.

Q Is it fair to say that your knowledge of narcotics was not primarily activity in Nassau County?

A Yes.

Q Did there come a subsequent time when you began talking to federal authorities concerning narcotics activity?

A Yes.

Q And thereafter you testified in a number of cases?

A Yes.

Q You were cross-examined concerning, I believe, whether you intended to murder Patsy Parks; is that correct?

A Yes.

Q Mr. Lipsky, I want to ask you the following questions:

First, did you intend personally, yourself, to kill Patsy Parks?

A No.

Q Did you personally desire her to be killed?

A No.

Q When you and Pacelli left his house in New Rochelle after he hit his hand and said, "I know what I have to do," did you think that Pacelli planned to kill her?

A Yes.

Q When Pacelli sent you in to purchase the gasoline, did you think then that he intended to kill her?

A Yes.

Q When he sent you into the Hippopotamus to fetch her and aos to fetch some matches, did you think that Pacelli intended to kill her?

A Yes.

Q And thereafter, when you were riding around in a car on Long Island, did you think he intended to kill her?

A Yes.

Q Were you positive that he would not change his mind?

A No, I wasn't positive that he wouldn't change his mind, but I thought there may be a chance he might change his mind, but if he didn't change his mind, he had made plans to kill her.

Q Insofar as your intent is concerned in the murder of Patsy Parks, what is it that you intended to do in connection with that murder?

A Whatever Pacelli told me to do in connection with causing her death.

Q Mr. Lipsky, in the ten months or so that you say you worked for Mr. Pacelli, did you ever refuse to do anything he asked you to do in connection with that employment?

A No, I didn't.

Q Mr. Lipsky, I want to ask you some questions concerning a series of people.

First, Margie Jacklone. Is she a friend of yours?

A She was.

Q Was she a friend of Pacelli's?

A Yes.

Q Was she a friend of Pacelli's wife?

A Yes.

Q Did she attend their wedding?

A She did.

Q Do you know where she is now?

A No, I don't know where she is.

Q I take it you testified you were in the cocaine business with her; is that correct?

A Yes.

Q And this was during what period of time?

A I think starting around Thanksgiving 1971 up until March of '72.

Q Can you tell us how extensive this operation was that you and she were in?

A Not very extensive. I would take some cocaine that was Pacelli's that I had in my possession, give it to her. She would do some work on it, dilute it, package it, and take it down to Florida or into New York in the discotheques and night clubs and sell it, and she was supposed to give me half the money that she received for selling the cocaine.

Q In other words, this was a side operation to your principal activity?

A That's correct.

Q Mr. Lipsky, more questions concerning this man Benny Febre. He was a friend of yours; is that correct?

A That is right.

Q Was he a friend of Pacelli's?

A Yes, he was.

Q Did he also attend Pacelli's wedding?

A Yes.

Q Was he an usher at that wedding?

A Yes, he was.

Q You were asked on cross-examination whether Mr. Febre was involved in narcotics; do you remember that?

A Yes.

Q Am I correct that you said you had heard in the past he had been involved in narcotics; is that correct?

A Yes.

Q Do you have any specific knowledge of any particular narcotics transaction that he was ever involved in?

A No, I did not and I do not.

Q Do you know where he is now?

A No, I do not.

Q Questions concerning Al Bracer. You were friendly with him, were you?

A Yes.

Q And was he a friend of Pacelli's?

A Yes. A friend and a partner.

Q How did you meet Al Bracer?

A Through Pacelli and Abby Perez.

Q Did he attend Pacelli's wedding?

A Yes, he did.

Q Was he also an usher at Pacelli's wedding?

A Yes, he was.

Q Do you know where he is now?

A No, I don't.

Q Abby Perez. Was he a friend of yours?

A Yes.

Q Was he also a friend of Pacelli's?

A Yes, he was.

Q Did he attend the Pacelli wedding?

A Yes, he did.

Q Was he also an usher at the wedding?

A Yes, he was.

Q Do you know where he is now?

A No, I don't.

Q Barbara Jalaba, she was the sister of Pacelli's wife; is that correct?

A That is correct.

Q And you testified concerning her presence in the apartment when you and Pacelli returned from the murder, is that correct?

A That's right.

Q Do you know where she can be found?

A No, I don't.

Q Beverly Jalaba, do you know where she is?

A No, I don't.

Q Do you know where she can be found?

A I have no idea.

Q Shifting you to another subject, you were shown a couple of letters that you had signed with some kind of nickname, do you recall that, on cross-examination?

A Yes.

Q One of these letters was addressed to somebody called Dean the Dog; do you remember that?

A Yes.

Q Who is he?

A The young son of Margie Jacklone, named Dean.

Q What were your relations with him?

A I was very friendly with him, and I used to take him out all over New York to restaurants, movies, basketball games and Playland.

Q How old was he when you sent him the letter, roughly?

A Around ten, eleven or twelve years old. Something like that.

Q You have been asked concerning whether you watched

horror shows in Florida, is that correct, or whether you did in the past?

A Yes.

Q I take it you watch them; is that correct?

A That I watched -- that I used to watch them?

Q Yes.

A Yes, that's right.

Q Did you watch them with other people?

A Yes, I did.

Q Who did you watch them with?

A Friends of mine. Boy friends of mine.

Q Where would this take place?

A Usually at my home or at one of their homes.

Q How did you acquire this nickname, Mr. M. T. Graves?

A A friend of mine sort of hung that nickname on me because we always usually came to my house to watch the show.

Q I think you said something concerning Diane Caine earlier.

Did she have any children?

A Yes, she had three small children.

Q Did you sometimes watch horror programs with them?

A Yes.

Q While watching them, did you make faces and noises?

A Faces to amuse them and scare them.

Q And do you have a nickname that these children use in connection with you?

A Yes.

Q What is that?

A Uncle Wart.

Q You were asked, I believe, on cross-examination, whether you had seen a psychiatrist while you were in Florida; is that correct?

A That is correct.

Q Mr. Lipsky, when did your father pass away?

A 1967.

Q When, in relation to his passing, was this interview with the psychiatrist?

A After his death.

Q Were you the only member of your family who went to see the psychiatrist?

A No.

Q Who went to see him?

A My brother, my sister, my mother and myself.

Q Whose idea was this that you all visit a

psychiatrist?

A My mother's.

Q I believe you have been asked on cross-examination whether while you were in the Nassau County jail you wrote a letter to your sister, which I do not have in front of me, but which said, in substance, in effect, among other things that you were a warped cynic of a magnitude of which she could have absolutely no conception.

Do you remember that letter?

A Yes.

Q You also said in there if she wanted to play truth with you, you could play it as well or better than she, or something along those lines?

A Yes.

Q Do you remember what happened that caused you to send the letter?

A Yes, I think so.

Q Well, can you tell us?

A She had sent me a letter -- I had been writing my mother and I wrote her some letters complaining about my living conditions and my problems and the treatment in the jail, and my mother told my sister about the letters I am sending to my mother, and my sister wrote me back a letter which was telling me a lot of truths about myself,

that I should just shut up, I got myself into this position and I should not burden my mother with it any further since she was, in fact, paying my lawyer bill, and she had all this aggravation, being alone in the world, and she didn't need any additional aggravation from me, she had enough already with me sitting with a first degree murder charge on me in Nassau County jail, and I should lighten up on her a little bit and write her a nice letter, which I did say so in that return letter to my sister, and the fact is that my sister was telling me a lot of unpleasant truths about myself, which I didn't like, and to get back at her, the only way I could, I wrote her this very nasty letter, which I thought would upset her.

Q And Mr. Lipsky, when you said in that letter that you could play the truth game, or something along those lines, did that have any reference whatever to any testimony at any trials or any testimony anywhere about anything?

A No, sir, it did not.

Q By the way --

MR. EDWARDS: Pardon me for a moment, your Honor.

Q Mr. Lipsky, was the letter to your sister, do

you know, was it around the end of July 1972?

A I'm not sure, but I think so.

Q Do you remember what your problems were in the Nassau County jail that earlier caused you to write your mother, what you considered to be your problems, whatever they were?

A I was under indictment for murder. Nothing seemed to be happening, one way or the other, about coming towards a conclusion, either going to trial or anything else, and my type of confinement I didn't think was equal with the rest of the prisoners there. It was less than that.

Q Mr. Lipsky, on that subject, were you confined in a cell, along, by yourself?

A Yes. It wasn't actually a cell. It was a small room with a bed.

Q And you had been there since March 2nd or 3rd, is that correct?

A March 3rd.

Q Incidentally, Mr. Lipsky, there is also this language in here that you were on the same floor with the psychos and you were sorry you couldn't go near them and steam them up.

Why did you say that in that letter to your

sister?

A To anger my sister, maybe make her cry or upset her.

Q Did you also say in the letter, toward the end, after you finished with that subject, did you also say it might be a good idea at this time to start to discourage your child from remembering me as she'll probably never see or hear from me again. She's only a baby. Won't remember in a little while, anyway. She didn't know me well anyway. Too bad. She seems like a very nice little child, too.

Do you remember that?

A Yes, I do.

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Q Is it fair to say that you would try to make your sister feel poorly when you sent her that?

A Yes.

Q Was there any purpose to the letter at all other than to make your sister feel poorly?

A No, there was not.

Q Mr. Lipsky, you were asked on cross-examination some questions concerning witness fees and subsistence payments and so forth? Is that correct?

A That is correct.

Q Are you now confined in a federal prison facilities of some kind?

A I am.

Q Is this particular prison facility run by the Bureau of Prisons or is it run by some other arm of the government?

A Some other arm of the government.

Q Who operates it?

A The United States Marshal's service.

Q Now, in this particular prison, do they simply provide you with your food free of charge? How is your food paid for? Perhaps you could remind us.

A Each prisoner is given, is put on the books for subsistence money, $8 per day, each individual prisoner, and

the supervisor of the prison breaks it down to an amount that he feels is necessary for the daily consumption of each prisoner's food, and the remainder goes in each prisoner's individual fund for toilet articles and things of that type, and two of the prisoners twice a week go out with deputy United States Marshals and do the shopping for all the rest of the prisoners for a one week period, they go out twice a week.

Q Well, now, Mr. Lipsky, when you are in there are you treated as anything other than a prisoner?

A No.

Q Concerning these subpoena fees that you received for a time, were other prisoners in this institution also receiving subpoena fees?

A They were.

Q Did there come a time when you ceased to receive any subpoena fees?

A Yes, sir.

Q Around when? Do you remember?

A Around the fall of 1974, about four or five months ago.

Q I think you were asked on cross-examination whether you talked to an Agent Lore of the Drug Enforcement Administration concerning whether he could obtain some

sort of payments of money for you? Is that correct?

A That is correct.

Q Has the Drug Enforcement Administration ever paid you a nickel for anything?

A Not a penny.

Q Has anyone told you whether they would or not?

A Yes, Mr. Lore at one time told me no, I would not be given any money.

Q Has that since been confirmed with you?

A It has.

Q Now, Mr. Lipsky, have you been told anything concerning the continued existence of the particular prison facility that you are now in?

A Yes.

Q What have you been told?

A That it is shortly to be closed.

Q Have you been told where you are going to be sent?

A I'm sorry, I didn't hear the end of your question.

Q Have you been told where you will be sent when that facility is closed?

A We have been told we will be sent to a federal prison.

Q That is, you and the other inmates?

A Yes, sir, all of us.

Q Now, you were asked some questions concerning the interior of the Pacelli apartment? Is that so?

A Yes.

Q Do you remember when the Pacellis moved into that apartment in New Rochelle?

A Yes, shortly after June, 1971, which is when they got married.

Q After they moved in there, from let's say, June or whatever it was, through February 3rd and 4th, the night of the murder, roughly how often would you say you were in the Pacelli's apartment?

A On an average of three to four times a week most weeks.

Q How often if at all was Al Bracer present?

A Quite often.

Q And Abby Perez?

A Abby Perez was present quite often and, in fact, lived in an apartment adjoining Pacelli's apartment for quite a while with two other people.

Q Those two other people were young women?

A That is right.

Q Mr. Lipsky, you were asked some questions concerning your parole situation with the New York State authorities? Is that correct?

A That is correct.

Q Is it your understanding that whenever you finally receive a parole hearing that that means you are going to receive a parole?

A I'm sorry.

Q Is it your understanding that whenever you finally do receive a parole hearing that means you will then be paroled?

A No, I don't have that understanding.

Q What is your expectation at the present time in that regard?

A About when I will be paroled?

Q Yes.

A I have no idea whatsoever, but I seriously doubt that I will be paroled when I have a first parole hearing.

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Q Have you been told that either this office or any other part of the government is going to request the New York authorities to parole you?

A No.

Q Have you been told that they are going to recommend that you be paroled?

A No.

Q Isn't it a fact that you have been told that all negative information we have concerning you and all

positive information concerning your cooperation is going to be called to their attention?

A That is correct.

Q Including in the negative information that would be transmitted to them concerning your inaccurate testimony at two trials?

A That is correct.

Q Mr. Lipsky, a couple of questions concerning the knife that was thrown in the water?

A Yes.

Q What is your memory as to where you were when Pacelli told you he wanted you to throw the knife into the water?

A Sitting next to him in the car about 20 feet from the edge of the water.

Q You have testified to your memory on the appearance of the knife? Is that correct?

A Yes.

Q Was your testimony as to its appearance based upon observing it at the time you were throwing it into the water or was it based upon observing it on some prior occasion?

A Based on observing it on some prior occasion.

Q Where had you seen it previously?

A In Pacelli's possession, in his hands, or on top of his television set or on his bureau when he tooks his papers and money and identification and change out of his pocket at night, he put his knife on top of the money to hold it down, and that is where I observed it.

Q Would you tell us once more what you remember concerning the appearance of the knife?

A Yes, it was a knife when the blade was closed, about this long (indicating), of a silverish-aluminum color, and the blade came out from one end, and near there was a sort of a button you could depress to let the blade go back in the handle of the knife. On the other end, I believe it had a hook of some kind, a rectangular hook that swiveled where you could hook a key chain or hook it to a piece of string or something. It also had either a raised or indented outline of some animal on it, I think something like a panther, and to my best memory it had the letters K-55 also on it.

Q What do you remember concerning the color of the panther? Did you say you thought it was black?

A I thought it was black, but to my best memory it may just have been a different color than the aluminum color of the knife. I can't recall 100 per cent correctly if it was, in fact, a black panther.

Q Do you remember if the panther was imbedded in the

handle or whether it was raised out of the handle? Do you understand?

A Yes, I thought it was impressed into the handle of the knife, my best memory is, but it may have been the other way, raised from the handle of the knife. I am not sure which it was, whether it was imbedded or raised up from the handle of the knife.

Q Now, when you saw the knife that was shown to you in the courtroom yesterday, or, rather, several days ago, the one with the rust on it --

A Yes?

Q -- was there something missing from that knife that you had seen on Pacelli's knife?

A Yes, I believe so.

Q What was missing?

A That hook or swivel. This was the blade end. At the opposite end was where this hook or swivel or rectangular hook had been, and it was not there when I examined it in the courtroom.

Q Now, has anybody shown you a copy or an example of this type of knife in its original condition?

A No.

Q Mr. Lipsky, I am showing you what is marked 3550B for identification and I ask you if this is a typedcopy

of the handwritten account of the Parks murder that you gave to the police officers in Nassau County on the evening of March 2nd and 3rd?

A Yes, I believe it is.

MR. EDWARDS: Your Honor, could we have this marked the next exhibit for identification.

xx (Government's Exhibit 6 marked for identification.)

MR. EDWARDS: Your Honor, because I think it may avoid some confusion in the future, may we mark the typed copy of the handwritten account which has just been entered 3550B, can we have this changed to Government's Exhibit 7 for identification.

xx (Government's Exhibit 7 marked for identification.)

MR. EDWARDS: Your Honor, at this time I am offering 6 and 7 for identification in evidence, with the exception of certain very limited portions that I can show to the court that I believe are not pertinent, and I would then want to read those portions that are admitted of Exhibit 7 for identification to the jury.

MR. WALL: Your Honor, we would object on the same grounds as previously stated at the side bar.

THE COURT: I will receive them.

MR. NESLAND: We will also ask, your Honor, that we be given leave to submit redacted copies deleting those

portions which we do not intend to read.

(Government's Exhibits 6and 7 received in evidence.)

MR. EDWARDS: Your Honor, may Mr. Nesland read to the jury Exhibit 7, with the exception of the non-pertinent matter. This is the typed version of the hand-written account given to Sergeant Bonora.

THE COURT: What is Exhibit 6?

MR. EDWARDS: Exhibit 6 is the Q and A, your Honor.

(Mr. Nesland reads to the jury from Exhibit 7 in evidence.)

MR. EDWARDS: Your Honor, that concludes the redirect.

RECROSS-EXAMINATION

BY MR. DUKE:

Q Mr. Lipsky,you testified under oath last August in a case in Florida, did you not?

A Yes.

MR. EDWARDS: Objection, your Honor. This isn't recross. I submit it's not cross on my redirect.

THE COURT: Sorry?

MR. EDWARDS: I submit this has no relation to the redirect examination, as far as I can see.

MR. DUKE: It's preliminary, your Honor.

THE COURT: I don't see it, Mr. Duke.

MR. DUKE: I will rephrase the question and perhaps your Honor will see it.

Q Mr. Lipsky, you testified under oath last August that you had never heard the term "truth game," didn't you?

MR. EDWARDS: Objection, your Honor. He already covered that letter on cross-examination, the letter to his sister. He has already cross-examined on that.

MR. DUKE: There is additional matter raised by the redirect, your Honor.

THE COURT: Yes. Overruled.

MR. DUKE: Would he read the question back, please?

(Question read)

A I don't exactly recall what I testified to in August, Mr. Duke, but if you will check that letter that I wrote to my sister, you will see that I did not say "truth game" in there.

Q You didn't use those words?

A Maybe you can refresh my memory.

Q Did you tell your sister, "You want to play truth with me, it's a game I play better than you"?

A Yes, but I didn't say truth game. I said the truth.

Q When you said it's a game, were you not referring to the truth game?

A Yes; all right.

Q Were you asked this question and did you give this answer:

"Q You don't understand what I mean by the truth game?

"A I have never heard that term."

MR. EDWARDS: Your Honor, I am objecting that this is not proper recross.

THE COURT: Yes; sustained.

MR. DUKE: Your Honor, again it's preliminary.

THE COURT: I think we covered the point already, Mr. Duke.

MR. DUKE: This is just preliminary to some other matters, your Honor.

THE COURT: I sustain the objection to the question.

Q Mr. Lipsky, when you testified in that Florida case you didn't know that the lawyer had the letter --

MR. EDWARDS: Objection, your Honor. May we approach on this?

THE COURT: No, I will sustain the objection.

MR. DUKE: Your Honor, we would like to make an offer of proof.

THE COURT: All right.

(At the side bar)

MR. EDWARDS: Your Honor, may I be heard first? My point is simply this. The fact that Lipsky wrote this letter and said these things was brought out on cross-examination. At that time they had the opportunity, if they wished, to cross-examine him concerning his testimony on the subject in some Florida case. What they are attempting to do now is simply to reopen cross-examination

and ask things that should have been asked, if at all, in the first place.

This is limited to new matter brought out by me on redirect, and accordingly, I think that the only way we will ever get through the examination of Mr. Lipsky is to limit the recross-examination very strictly to new matter brought out on redirect.

MR. WALL: The offer of proof is this.

On redirect examination, Mr. Edwards brought out a reason why that letter was written, attempted to mitigate the effect of it. We propose to show that in Florida he swore he never heard the term, "the truth game." He was obviously surprised when Mr. Hogan, who was the attorney for Craviro, had the letter. He then admitted he wrote it, and the explanation he gave then was not only different from the explanation he gave now for having written the letter but, by his own prior correspondence, was totally false and we can prove it, that he lied as to the explanation.

He has said here that the reason why was because his sister had annoyed him and insulted him and he was getting back at her. In Florida, when confronted with the letter, he said he was in a state of depression over his living conditions and "you get to think about things and

they bug you."

We can show by prior letters his conditions changed, he was in a new room, he had a TV set and he told Ginny he felt good and happy. He --

THE COURT: Was there prior testimony by him as to why he wrote this letter?

MR. WALL: No. The explanation in mitigation of what's in the letter was brought up by Mr. Edwards. We want to show he gave a different explanation under oath in Florida.

THE COURT: There is a different explanation in prior testimony?

MR. WALL: Yes, and that explanation is false by virtue of letters --

THE COURT: I won't admit it, anyway.

Q Mr. Lipsky,you were testifying before that you were confronted with the letter to your sister and you admitted at that point, you admitted that you had not only heard about the truth game but you actually used that phrase, did you not?

A Used the phrase where, Mr. Duke?

Q In the letter.

MR. EDWARDS: Your Honor, I submit the paper speaks for itself.

THE COURT: Yes, I think we covered this point, Mr. Duke.

Q Did you not explain the reasons for writing the letter as follows, Page 228:

"I was locked in a room 23-1/2 hours a day, which you are not concerned about, but these things do things to your mind when you are locked up in a little room and they open the door and throw in a tray with some garbage on it, and they lock the door, and you eat with a spoon like a dog. You write things that are on your mind and things that play on your mind. You wear the same clothes for a couple of weeks, and you take a shower when they feel like letting you take a shower. And you get all kinds of abuse, yelling and screaming at you and everything, because the people in the place knew why I was there."

Did you give that explanation for writing the letter?

A Will you show me the paper you are talking about?

(Pause)

I remember saying that.

T9

Q Was that the explanation for the letter?

A The letter to my sister?

Q Yes.

A That was part of the explanation of the letter to my sister. The other part was to make her feel bad, badly, and it was a nasty letter to my sister because she had written a letter to me and I had no way to vent my feelings of being angry at her for telling me truths about myself and that I got myself into the position that I was in.

Q Did you say one word about that in Florida, Mr. Lipsky?

A I don't know if I did or not, Mr. Duke. You only showed me one page there.

Q Do you remember saying one word about it?

A No, I don't, Mr. Duke.

Q As a matter of fact, Mr. Lipsky, the letter was dated July 23, 1972, was it not -- the 26th, excuse me? Do you remember that date?

A I don't remember the date, Mr. Duke. If you tell me that is the date of the letter.

Q Showing 3656?

A Yes, it was July 26th, Mr. Duke.

Q As a matter of fact, Mr. Lipsky, your condition had rapidly improved and changed drastically on June 1, 1972,

mmh2 Lipsky-recross

hadn't it? June 1st?

A I don't know what happened on June 1st, Mr. Duke.

Q It had greatly improved prior to your writing that letter?

A Will you explain to me what you mean "improved"?

THE COURT: Mr. Duke, didn't we go into this on your cross-examination?

MR. DUKE: I'm sorry.

THE COURT: Didn't we go into this particular point on your cross-examination?

MR. DUKE: No, we did not.

THE COURT: I thought we had gone into what happened on June 1, 1972.

Q Mr. Lipsky, at the time, on July 26th, you gave the explanation that I just read. That was part of the explanation for writing that letter. As a matter of fact, Mr. Lipsky, didn't you write a letter to Mr. Gwinn on June 6th telling him that your boredom has mostly ceased? Do you remember telling Mr. Gwinn that?

A On June 6th?

Q June 6, 1972: "I feel good; I feel in good shape where I am"?

A The letter was dated June 6th from me?

THE COURT: Yes, I think, Mr. Duke, we have done

all we need to with this letter of July 26th. Let's go on to another subject.

Q As a matter of fact, you had your own TV at that time, Mr. Lipsky?

MR. EDWARDS: Objection, your Honor.

THE COURT: Sustained.

Q Mr. Lipsky, nobody from the government promised you that they would get you a separate room in Nassau County, did they?

MR. EDWARDS: Objection, your Honor. That has been covered.

THE COURT: Yes, I think so, Mr. Duke. Sustained.

Q Nobody in the government promised that they would get your murder charge reduced to manslaughter, did they?

MR. EDWARDS: Objection.

THE COURT: Sustained. Mr. Duke, let's get on to something that deals with the redirect.

MR. DUKE: Your Honor, I would like to make an offer of proof on this also.

THE COURT: All right.

(At the side bar.)

MR. DUKE: Mr. Edwards brought out the extensive promises that had been made to Lipsky and the promises that had not been made to Lipsy, and I want to ask him, I want to elicit from him that nobody promised to get his manslaughter

reduced, but they did it; nobody promised to go out when he was sentenced and make a speech on it, but they did it. That is all I want. And then I am through.

MR. WALL: There is one more.

MR. EDWARDS: This is already in the record on cross-examination. He can argue it later.

MR. DUKE: I want to ask him if anybody promised him to get his murder charge reduced to manslaughter.

MR. EDWARDS: I will concede the federal government tried to get the charge reduced.

THE COURT: What do you want to ask the witness?

MR. DUKE: What is the third one?

MR. WALL: The third one, your Honor, has just escaped my mind for a second.

MR. DUKE: We want to bring out that nobody promised to help prior to the time that it was done.

THE COURT: All you need do is ask the witness whether anybody any promises. The fact that it was done you can get in some other way.

MR. DUKE: Nobody promised to help him get his murder charge reduced.

MR. WALL: The final matter is Mr. Edwards brought out from the witness that the witness expects that Mr. Edwards or his office will inform the parole authorities in New York

of both the good things and the bad things, including two prior erroneous matters of testimony. We want to ask him whether or not he was also under the view and swore under oath that he expected the government to bring those two bits of erroneous testimony to Judge Spitzer's attention.

MR. EDWARDS: It has already been covered that the government did not bring that to Judge Spitzer's attention. That was covered on cross.

MR. WALL: It was not covered that he said under oath that he expected that they would bring that to the judge's attention.

MR. EDWARDS: What difference does it make?

MR. WALL: You put in the fact that he expected it go to the Parole Board and it didn't. He may not expect it to go to Judge Spitzer.

MR. EDWARDS: I will put in my letter to Lipsky in which I promise him that I will do nothing for him except what is referred to in this letter.

THE COURT: I don't really see the significant probative value of this.

MR. EDWARDS: It's in the record, in any event.

MR. DUKE: Not in connection with promises.

MR. EDWARDS: Here at the bench I will say it was an error. We should have. It was not done.

MR. DUKE: You or I can ask him and get an affirmative answer that no promises have ever been made to him.

MR. EDWARDS: About what?

MR. DUKE: About anything.

MR. EDWARDS: Of course not. He has been told all sorts of things.

MR. DUKE: Then I am entitled to elicit if these important things which he got were the result of promises or whether he just got them.

THE COURT: Let's go through the promise bit, but just the promises that he can tell you about.

(In open court.)

BY MR. DUKE:

Q Mr. Lipsky, did the government promise to get your murder charge reduced to manslaughter?

A The government didn't promise to do that.

Q Did the government --

MR. EDWARDS: I think he ought to be allowed to complete the answer.

A (Continuing) The government didn't promise to do that, but while I was on trial for murder in January of 1973, my attorney, one of my attorneys, Robert Baumann, came to see me on a weekend in the Nassau County jail and said one of

the people in the United States Attorney's office, a Mr. Walker, was talking to the people in Nassau County trying to plea bargain in my case, and my attorney then, Mr. Baumann, I believe it was then, that he said, "We are trying to see if they will allow you to plead guilty to manslaughter in the first degree."

Q Mr. Lipsky, I am going to ask you a couple of questions and if you can will you please answer them just yes or no.

A Yes?

Q Did the government promise to get you a particular sentence in the manslaughter case?

A You mean a number of years?

Q Yes.

A No.

Q Did they promise to get you an indeterminate sentence?

A They did not.

Q Did they promise that they would send a representative out to Judge Spitzer at your sentencing and tell Judge Spitzer, what, in fact, Mr. Phillips did tell Judge Spitzer?

MR. EDWARDS: Objection.

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THE COURT: Sustained.

Q Did they promise to send Mr. Phillips out to your

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sentencing and make a speech on your behalf?

A The "they" you speak of, I don't know who "they" is you speak of, but Mr. Phillips told my attorney that he would be there to tell the judge when I got sentenced whatever he had to tell him.

Q Did they promise that they would not tell Judge Spitzer that you falsely testified at two prior trials?

MR. EDWARDS: Was the question they promised they would not?

MR. DUKE: Yes.

A "They" meaning the federal government?

Q Yes.

A No, they didn't. There was no mention of that to me whether or not that subject would be mentioned to the judge.

Q It was not mentioned to the judge, was it?

A I don't think so.

Q Did you testify in a case called United States. Catena?

MR. EDWARDS: Objection, your Honor.

THE COURT: Let's not go into that, Mr. Duke. I sustain the objection.

MR. DUKE: No further questions.

REDIRECT EXAMINATION

mmh9 Lipsky-redirect

BY MR. EDWARDS:

Q Mr. Lipsky, you testified what it was that you were anticipating we would do in the future concerning the parole authorities in New York? Isn't that correct?

A I have testified so.

Q You testified that we would call to their attention unfavorable information, whatever we had, and also favorable information concerning your cooperation, whatever it is? Isn't that correct?

A That is correct.

Q Now, was this in the form of a letter to you from this office?

A Yes.

Q And the letter contained this paragraph:

"You must understand very clearly that aside from the matters referred to above this office has no intention of providing you with any assistance whatever concerning your present manslaughter sentence."

Do you remember that in the letter?

A I do.

Q Do you think that letter sets forth what our intentions are?

A Exactly.

MR. EDWARDS: No further questions. Oh, pardon me.

I'm sorry, your Honor.

Q When you were shown in the trial in Florida that letter to your sister, were you aware that this letter had come into the possession of anyone other than your sister?

A Yes, sir.

Q Who did you think had it?

A My former attorney, Mr. Walter Gwinn.

Q Were you aware that he turned it over to anyone else?

A Yes.

Q You were already aware of that at the time you were shown it at the trial in Florida or did it surprise you?

A I'm not sure, Mr. Edwards, that I received in the mail a copy.

Q Well, I'm sorry, but you say you're not sure of whether you knew that your lawyer turned it over to somebody else or not? Is that it?

A Not at that point, but I received --

Q That's all I am asking you. I am not asking you what you found out later.

A To the best of my memory when I sat in that witness chair in Miami I was not sure what letters Mr. Gwinn had turned over to counsel.

Q When you were shown that letter in the court in Florida did you instantly remember all about the circumstances surrounding your writing it? Or did you remember immediately all the facts as to the circumstances under which you wrote it?

A Yes, most of them.

MR. EDWARDS: I have no further questions.

THE COURT: Mr. Lipsky, you are excused.

(Witness excused)

THE COURT: Ladies and gentlemen, we will recess for lunch. 2 o'clock. Remember my usual admonition: Don't discuss this case amongst yourselves or with anyone else; don't read anything about it in the newspapers; don't listen to anything on radio or watch anything on television concerning it. Have a nice lunch.

(Luncheon recess.)

MR. WALL: Why don't we take the motions here, your Honor?

THE COURT: We might do that, and you can say that you have motions that you have discussed with me, and I will make whatever ruling I have previously made.

MR. EDWARDS: That's fine.

Then, for that purpose, your Honor, subject to the reservations we have made, we rest.

THE COURT: All right.

MR. DUKE: Your Honor, I first of all have a motion to dismiss for lack of evidence before the grand jury and proper venue and I will hand up in support of that Exhibit 3531, which is Lipsky's testimony. I think it bears another. It has previously been marked for identification with another number, but I can't locate it.

THE COURT: For the record, at some point we ought to get the right number on this.

MR. DUKE: It's his testimony of January 31, 1973.

THE COURT: All right. I will deny that motion. Of course, you understand that my denials are without prejudice to your raising the motions again.

MR. DUKE: We would move to strike Lipsky's testimony on the ground that he --

THE COURT: This is two motions, I take it.

One of them is venue and the other is lack of evidence.

MR. DUKE: Yes.

THE COURT: Yes. I deny both of them.

MR. DUKE: I move to strike Barry Lipsky's testimony on the ground that the materials offered the Court in the pretrial motion and the evidence adduced at trial and the evidence offered at trial and excluded, including the evidence of a psychiatrist, which were made in the form of an offer of proof, establishes that Lipsky is an incompetent witness, has no respect for or understanding of the meaning of an oath.

I call the Court's attention to his testimony when he was asked what the oath meant, and he said it means that you stand up there and you say you are going to tell the truth, or words to that effect.

So I would move to strike his testmony on those grounds.

THE COURT: Yes. I will deny that motion.

MR. DUKE: I also move for a judgment of acquittal as to Count 1. The legal ground which was argued at length in the last appeal, that the Civil Rights Statute has no application --

THE COURT: Section 241.

MR. DUKE: 241, yes -- has no application to grand

jury witnesses or a trial witness who is subpoenaed by the Government and who hasn't evinced an affirmative desire on his part to testify.

T7 Your Honor, there is no evidence in this record that this witness had any desire to testify. We further move for a judgment of acquittal as to count 1 on the ground that there is no evidence a conspiracy was formed in the Southern District of New York to deprive Patsy Parks of her civil rights.

THE COURT: What is the thrust of that? Is it that the conspiracy was formed or wasn't formed in New York?

MR. DUKE: That there was no conspiracy formed in the Southern District of New York to kill Patsy Parks for the reasons alleged in the indictment. I don't have the indictment before me. Those reasons are alternative ones that were in retribution for having testified before a grand jury or to prevent her from testifying at a trial. In respect to that I simply point out I don't believe that the record establishes that Barry Lipsky agreed with the defendant in the Southern District of New York to kill Patsy Parks. I also do not believe that the evidence established, assuming Lipsky is to be believed, that if he agreed to kill Patsy Parks he shared the purposes alleged in the indictment, namely, to punish her for having testified before a grand jury or to prevent her from testifying at a trial.

Even if the evidence is stretched enough to permit the inference that he agreed to assist killing her, there is

simply no evidence of his purpose in doing so. Nor is there evidence that he understood the defendant's purposes to be those alleged in the indictment.

Further, it seems to me that even giving the evidence its broadest scope, the most that Lipsky may have agreed to do was accompany the defendant on this venture, and that agreeing to accompany him on this venture is not, I submit, an agreement having that stake in the venture and that shared purpose and the interest and desire and motive that is necessary to have a conspiracy under 241.

b2 THE COURT: I will deny that.

MR. DUKE: Also with respect to count 2 -- I am a little hazy -- frankly, I can't find the indictment-- but I don't think a case has been made out on count 2. I am serious about that. Assuming that a case is made out on count 1, I don't believe it is made out on count 2.

Does anybody have the indictment?

THE VOURT: I think the nature of the charge in count as I recall it is that the defendant alone, not in conspiracy with anybody, interfered with a potential witness.

MR. DUKE: That plainly did not occur in the Southern District of New York, and if it occurred at all, it did not occur in this district.

THE COURT: I think I understand your point and I

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will deny that motion also.

If you have left something out that you want to put on the record, go ahead.

MR. DUKE: If I have, it skips my mind.

THE COURT: Anything else?

MR. DUKE: About the psychiatrist?

THE COURT: You are finished with your motions?

MR. DUKE: Yes.

THE COURT: You are prepared to go ahead now?

MR. DUKE: Yes.

THE COURT: Can you give us some idea of what kind of testimony you have in mind?

MR. DUKE: This afternoon?

THE COURT: Yes.

MR. DUKE: We have in mind calling the fellow at the Econocar Company that rented the car to Al Bracer.

THE COURT: Is he here now?

MR. DUKE: Yes.

THE COURT: Then when do you get to the psychiatrist problem?

MR. DUKE: I would hope to get to him first thing in the morning. I need to tell him --

MR. NESLAND: If he is going to use Mr. Jetter, he has been here all day, from the Nassau County Police

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Department.

MR. WALL: I will put Mr. Jetter on.

THE COURT: Today?

MR. DUKE: Yes.

THE COURT: I am not asking you to adhere to anything; I'm just trying to get a picture of what we have in front of us. You have Mr. Jetter, who I believe testified at the prior trial; you have the fellow from the --

MR. WALL: Calabrese --

MR. DUKE: It's a different Econocar.

THE COURT: Then you have the psychiatrist?

MR. DUKE: Yes.

THE COURT: Unless I change my mind overnight, which I frequently do, my present inclination is to allow you to put on the psychiatrist. I think I want to talk to the psychiatrist in the presence of counsel before you put him on. I intended at such a session to tell the psychiatrist that he may not in any way indicate that he believes, that it is his opinion that Mr. Lipsky was lying when he was testifying. What I intend to do is to limit his testimony to the conclusions that he draws from his general observations the general conclusions that he draws from his observations of Lipsky here in court, the testimony of Lipsky. I assume he would be interested in taking into account that Lipsky

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shot at a television set and bet his head on a wall. Whether or not he would want to refer to reports of psychiatrists, of course, is something we will have to wait and see. But it seems to me that obviously it would not be inappropriate for him to refer to that.

I think the conclusion that I will allow him to draw, if this is his conclusion, according to your offer of proof, is that this is a man who by his perjury confession has indicated sometimes does not tell the truth, and perhaps some observations about why this is so. I would like to add that I am a little disturbed about this. It seems to me it's perfectly clear, and I think a generalization, that all of us can agree that an expert cannot invade the province of the jury to ultimately determine credibility. Perhaps an expert can be useful in providing information to the jury which can help them assess credibility, and because of that possibility at the moment I am prepared to consider allowing this expert to testify to a limited extent.

What disturbs me is how do you separate the testimony of the expert's opinions from the testimony of the expert which goes to the ultimate question of credibility of this witness as to what this witness said before the jury. Because I am disturbed about that problem, I feel I should explain it to the expert, and maybe not in these terms, but at least to

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give him an instruction as to the kind of testimony I will not permit.

Is there anything else?

MR. EDWARDS: Yes, your Honor. On this subject, of course, the reason we opposed taking this testimony is that in our view there is no real way to separate what he is being called for from the question of the witness' credibility, and it seems to me that on the offer of proof he can tell the jury nothing concerning the tendency, alleged tendency of Lipsky to lie, other than the fact that a man who behaves as Lipsky has behaved in the past is as a generality and as a statistical matter more likely to lie than a law abiding, upstanding citizen, which is information that the jury could not possibly need a psychiatrist for.

THE COURT: I can agree with you, Mr. Edwards, but I take it that the testimony that Mr. Duke expects is something that is going to go beyond that.

MR. EDWARDS: Your Honor, what I am asking for and which I think is in order is something to prevent what could prove to be a catastrophe as far as the orderly administration of a trial is concerned. I feel very strongly that he should testify on the voir dire prior to being permitted to testify in front of the jury. I think if I cross-examined him in front of your Honor on a voir dire it's

going to become abundantly clear that he has absolutely nothing of any value whatever to give to the triers of the fact that could possibly countervail against the confusion b3 that his testimony will cause.

THE COURT: You raised this point before, Mr. Edwards, and I have not ruled out that possibility. I suggest we go ahead with Mr. Jetter and if we can get the other witness in also, all right. I think, Mr. Edwards, the possibility that you suggested is one that I will want to give serious thought to. I think, as Mr. Duke has suggested, he ought to know where we are going to stand on this. I think it is likely that tomorrow morning I am going to want to and I am going to permit your expert to testify either on a voir dire examination of the kind which Mr. Edwards has suggested or in front of the jury or both.

MR. EDWARDS: Can I add just one thing, because I really think I should.

Number 1, I don't think my cross-examination on the voir dire will take very long, your Honor.

THE COURT: That does not concern me, Mr. Edwards.

MR. EDWARDS: Nonetheless, I just want to note that. The other thing is that Mr. Duke's offer of proof, as I understood it, was that he proposes to have the psychiatris testify to various information, alleged information concerning

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Lipsky which is not even in evidence.

THE COURT: It has to be in evidence.

MR. EDWARDS: Your Honor, what I am pointing out is--

THE COURT: This has to be at least in the form of a hypothetical, and hypotheticals have to be based on what is in the record.

MR. EDWARDS: Your Honor, this leads us towards some difficulties that are involved. Mr. Duke said this morning that he has some kind of report represented by some sort of investigator, prepared by some investigator some time in the past, and the psychiatrist is going to testify to having taken into consideration that report. It's not in evidence; it cannot be placed in evidence; he has no right to elicit testimony of this kind.

THE COURT: We discussed this question earlier.

MR. EDWARDS: One of the things that can be accomplished on the voir dire is to make some of these clear, because if he is basing his opinion on things that are not in evidence and cannot come into evidence, that has to be taken care of.

THE COURT: That was taken up today. I think you do have a problem there, Mr. Duke.

MR. DUKE: I agree, your Honor, but that is a

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mechanical problem. I thought it was proper for an expert to rely in reaching his opinion on items not introduced in evidence or not introduced except in support of his opinion, but I will abide by the court's ruling. If you think it is improper, I will limit him to documents in evidence.

THE COURT: I don't see how you can expect an expert to testify except on the basis of what he has personally observed -- your man has been in court -- or on the basis of matters which are in evidence. Matters outside the record he can't take into account.

MR. DUKE: Your Honor, I think the law is otherwise, but I'm not --

THE COURT: Well, I may be wrong.

MR. DUKE: It seems to me in the context of this case of very trivial concern.

THE COURT: Of course, he can rely on matters outside the learned by his predecessors, things that come to him as an expert. But things that go to the question of Lipsky's mental capacity, as I understand the law, it's got to be on the basis of matters in the record.

MR. DUKE: Your Honor, may I suggest this: That I research it --

THE COURT: Surely.

MR. DUKE: It is, I think, of very little importance to us one way or the other, because this investigative report is trivial background. There's nothing of great consequence that is in it.

THE COURT: I would be astonished if you will find that the law is that an investigative report not

available to the other side, not in evidence, can be used as the basis of expert testimony, but I will be happy to see what you can find out about the law.

MR. EDWARDS: Your Honor, may I note one more thing as to why it is if he is going to appear at all: In the Hiss case, at least the Court and counsel were provided in writing with the hypothetical question.

THE COURT: Which went on for about ten pages.

MR. EDWARDS: That's right. But since we have not been provided with any such thing -- the offer of proof, frankly, your Honor, from that point of view is worth absolutely nothing. There's no recitation of the detailed fact that he is going to be asked his opinion on. Therefore, unless it is submitted in writing first thing tomorrow morning, we will have to listen to his testimony on the voir dire tomorrow whether he is going to testify on the basis of evidence or not.

THE COURT: All right. Let's see what tomorrow morning brings.

(In open court; jury present)

MR. EDWARDS: Your Honor, I think we need the clerk.

MR. NESLAND: At this time we have Government's Exhibits 11 and 12 for identification, which have previously

been received in evidence, marked in evidence by the clerk.

xxx (Government's Exhibits Nos. 11 and 12 for identification were marked in evidence.)

MR. EDWARDS: Your Honor, at this time, subject to the reservations noted, the Government rests.

THE COURT: Mr. Duke, as I understand it, you and I have discussed a number of motions which you have.

MR. DUKE: Yes, your Honor. I would like to renew them at this time.

THE COURT: Yes. And as I have indicated, you know what my rulings are.

MR. DUKE: Your Honor, we call Ralph Calobrisi.

R A L P H C A L O B R I S I, called as a witness by the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DUKE:

Q Mr. Calobrisi, how are you employed?

A I am a police officer with the New York City Police Department.

Q How were you employed in February of 1972?

A I was employed as a rental agent at Econocar at Westchester Avenue in the Bronx.

A No, sir.

Q Are you reasonably certain that it did?

A In my opinion it's blood.

MR. DUKE: Thank you.

MR. NESLAND: No further questions, your Honor.

THE COURT: Thank you, Mr. Jetter.

(Witness excused)

MR. DUKE: May we approach the bench?

(At the side bar)

MR. DUKE: Our next witness is a psychiatrist, as we mentioned.

THE COURT: All right.

How long do you think your voir dire will take, Mr. Edwards? I just want to give the jury some indication.

MR. EDWARDS: Yes, I know. I think that mine mightn't take more than twenty minutes or so. However, what I want to hear before the voir dire is the direct testimony that this witness proposed to give in front of the jury, because that's where the problem arises.

THE COURT: So it might take forty-five minutes or so?

MR. EDWARDS: I think Mr. Duke is the authority on that.

MR. DUKE: I think the testimony could be compressed somewhat for purposes of the voir dire. If you get the general trent of it --

MR. EDWARDS: Your Honor --

THE COURT: I understand your problem, Mr. Edwards. We will compress it to the extent we can and go into details to the extent we can.

Can we do it in an hour? Can you give me an estimate?

MR. DUKE: An hour, yes, certainly.

MR. EDWARDS: All right. I just want to emphasize that my concern is that the jury hear nothing that is either inadmissible or based upon material not in evidence and, therefore, I want to hear a run-through of what he is going to say.

THE COURT: Yes. I understand that.

MR. DUKE: Your Honor, if we can have a stipulation as to this man's qualifications, it will save time.

THE COURT: Yes, I think that can be done.

Where would you like to have the voir dire?

MR. EDWARDS: I think here in the courtroom, your Honor. No question about it.

THE COURT: All right. Why don't I tell the jury to come back at 11:30? They can go out for coffee.

MR. EDWARDS: Frankly, to be realistic, I would say 12:00.

THE COURT: Well, they have nothing else to do. They can come back at 11:30.

MR. EDWARDS: That's just my estimate.

MR. WALL: Someone ought to be told to be careful, in case one of them walks in.

THE COURT: After the doctor testifies, will we have somebody else?

MR. DUKE: Yes, I should have somebody by noon.

THE COURT: How many people do you have after that?

MR. DUKE: Well, I presently have one coming.

THE COURT: So there's a good possibility that we can finish your case today?

MR. DUKE: No. We have other witnesses tomorrow, unavailable today. We have a problem with a lady who is sick.

THE COURT: When do you think we can get to the point of summation?

MR. DUKE: I have no serious doubt that we will finish tomorrow. My guess is perhaps by lunch time, if we are lucky.

THE COURT: All right.

You both have in mind, of course, that I am concerned about the charge, and I will need your help on that, and of course, if the doctor does testify, the charge will need to include something on his testimony.

MR. EDWARDS: I know, your Honor.

THE COURT: All right.

MR. WALL: You will have our requests by about noon, your Honor. They are being typed.

(In open court)

THE COURT: Ladies and gentlemen, there is a question which I have to deal with with the lawyers, and it's going to take a little bit more time than these questions usually do. I don't like to keep you waiting around unnecessarily. I suggest you plan to be back here at noon -- 12:00 o'clock. Come back and gather, as you usually do, in the jury room, and hopefully we will be ready to go at that time.

If you wish, of course, you can go out and get some coffee or enjoy the rain or whatever you wish to do.

It's just as important as it always has been to remember my admonition: Don't talk about this case among yourselves or with anybody, don't look at newspapers or television or listen to the radio.

(The jury left the courtroom)

THE COURT: Gentlemen, I would like to take five or six minutes to deal with another matter.

(Recess)

MR. NESLAND: May the record reflect that at this time we are making Government's Exhibit 6 in evidence and Government's Exhibit 7 in evidence, which are the redacted versions of the previous Government's Exhibits 6 and 7 in evidence.

Is that correct?

MR. DUKE: Yes.

xxx (Defendant's Exhibit EE was marked for identification.)

MR. EDWARDS: Your Honor, I will stipulate that the doctor is a psychiatrist. I intend to cross-examine him on these areas.

THE COURT: Can we understand that you will stipulate that he is a qualified -- that he is qualified to testify in the areas that he is about to testify in?

MR. EDWARDS: No, your Honor. I can't concede that anyone is qualified to testify along these lines.

THE COURT: But as far as the fact that he went to certain schools and took certain courses and published certain articles; I take it that that you would be willing to stipulate to.

MR. EDWARDS: Yes.

THE COURT: All right.

xxx (Defendant's Exhibits FF through JJ, inclusive, were marked for identification.)

THE COURT: I would suppose the way to proceed is for you, Mr. Edwards, since this is your application, to start out?

MR. EDWARDS: No, your Honor, I don't think so. I think the question is whether the testimony he proposes to give is proper testimony and, therefore, I think we ought to hear the testimony he proposes to give.

THE COURT: I'm not sure we need to concern ourselves at this point about the burden.

D A V I D A B R A H A M S E N, called as a witness by the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DUKE:

Q Doctor, what is your address?

A 1035 Fifth Avenue, New York City.

Q Is that your business address?

A Yes.

Q What is your profession?

A I am a physician, a psychiatrist, a licensed

psychiatrist in the State of New York.

Q Do you practice psychiatry?

A Yes.

Q Exclusively?

A Yes.

Q How long have you been practicing psychiatry?

A Since 1932 or '33, for almost -- about forty years.

Q How long in the State of New York, Doctor?

A Since 1943.

Q Have you been associated with a hospital as a psychiatrist?

A Yes.

Q What associations do you have?

A I have been with St. Elizabeth Hospital, Washington, D. C.; with Bellevue Hospital in New York City; with Menninger Clinic in Topeka, Kansas; with the Psychiatric Institute at Columbia University; and I am also -- I am now also associated with Roosevelt Hospital.

Q Are you a diplomate in psychiatry of the American Board of Psychiatry and Neurology?

A Yes.

Q Have you done work as a psychiatrist in prisons, in connection with prisons?

A Yes.

Q What work is that?

A I was first working at St. Elizabeth Hospital for a short time in the prison ward, and then I worked at Illinois State Penitentiary, at the diagnostic depot.

THE COURT: Which penitentiary?

THE WITNESS: Illinois State Penitentiary, at Joliet Diagnostic Depot.

A (Continuing) And when I was working at Bellevue Hospital I worked in the prison ward there and I also worked at the psychiatric clinic, at that time called the Court of General Sessions.

Q Doctor --

A I'm sorry.

And I have also worked as a psychiatrist, part-time, at Sing Sing Prison.

Q And did you also direct some scientific research at Sing Sing Prison?

A Yes.

Q What was the nature of that research?

A This was a research project supported by the State of New York in order to find out the nature of persons suffereng from psychopathy, particularly in connection with sex manifestations.

THE COURT: What does that mean?

THE WITNESS: People who had raped or who had committed sexual offenses, but of course also we examined other people who at that time were thought to be psychopathic personalities.

THE COURT: Related to sex or --

THE WITNESS: Yes, mostly related to sex, yes.

THE COURT: What you really mean by "sex" is --

THE WITNESS: Sex crimes.

THE COURT: -- crimes that are regarded as sexual offenses?

THE WITNESS: Yes.

Q In connection with your research at Sing Sing, did you, yourself, interview any psychopaths?

A Yes. I have interviewed quite many prisoners and people who were considered to be psychopaths; yes,I have.

Q Approximately how many in Sing Sing?

A Throughout four years, possibly I may in Sing Sing have seen -- well, it's hard to say,really.

Q Can you give me an approximation?

A Several hundred people.

And in Illinois, many, many hundred.

Q And in connection with your association with these various hospitals, have you interviewed or treated people regarded as psychopaths?

A Yes.

Q Approximately how many, roughly?

A It's very difficult for me to give an answer, particularly with regard to treatment, because most of these people were untreatable. Most of them were.

Q I am simply inquiring, about, about how many you have interviewed.

A Oh, this is a different question.

I believe I must have interviewed altogether at least a thousand people.

MR. EDWARDS: Could we have that clarified?

Does that mean thousands of psychopaths?

Q Doctor --

THE WITNESS: I wouldn't say thousands of psychopaths. I would say one thousand psychopaths.

THE COURT: What's a psychopath?

THE WITNESS: A very good question, your Honor.

A psychopath is a person who because of his emotional instability is not able to get along with other people, and because of his extreme egocentricity, self-centeredness and narcissism will carry out things --

MR. EDWARDS: Could he talk a little louder, your Honor? We are having trouble hearing.

THE COURT: Yes, Doctor. You understand the problem. In this room it's difficult to hear you.

THE WITNESS: I am sorry, sir.

THE COURT: If you could keep your voice, consciously keep your voice up, it would help.

THE WITNESS: A psychopath is a person who is extremely self-centered, egocentric or narcissistic, and for this reason acts out his own wishes as a self-serving matter for himself; whatever can further his own interest he does, without taking other people into consideration. Such a man as a psychopath is a person who, because he follows his own desires, his own interests, is able to carry out anti-social acts and criminal acts.

I would like to say that some of these psychopaths are often quite gifted and artistically gifted, sometimes, but most often, they get in difficulty with their family whom they are inclined very often to swindle, by writing bad checks, for instance, being unable to have had -- having had a very poor schooling, in that they have with some difficulty been able to graduate, but haven't been able to make their aim --

MR. EDWARDS: "Haven't been able to" do what?

THE WITNESS: Haven't been able to make a goal in social terms.

MR. EDWARDS: I'm sorry --

THE WITNESS: "Goal," g-o-a-l.

THE COURT: I suppose, Doctor, most of us if not all of us are selfish to some extent.

THE WITNESS: Yes, that is correct, your Honor, but this selfish interest exceeds anything else when it comes to the psychopath, and this is also one reason why he is so difficult to treat. Such a person has very little insight into himself. He is really a pleasure-loving man, and this is also one reason why we very often and frequently do find drug addiction or alcoholism or sexual aberrations in these people we describe as psychopaths.

MR. EDWARDS: Because they are pleasure-l ing?

THE WITNESS: No, I didn't say that, sir.

THE COURT: Mr. Edwards, this isn't a conference. Maybe it ought to be.

MR. EDWARDS: I'm sorry, sir.

MR. NESLAND: I think it was just for clarification, your Honor. I couldn't tell what he was saying.

THE COURT: All right, I understand.

I'm sorry, Mr. Duke.

Q Doctor, there are a lot more aspects to the definition of psychopath, aren't there?

A Yes.

Q When you answered the Judge's question, you didn't mean to be exclusive in your description. There's a more elaborate description?

A Yes.

THE COURT: There are people, I take it, who are psychopaths in a certain specialty, if I may put it that way, a sexual way?

THE WITNESS: A sexual way, or in a con way, conning people, swindling.

THE COURT: Anything else?

THE WITNESS: Well, any type, in any for we can mention. I think the psychopath really represents the greatest variety of people who are able to commit crimes or being anti-social, marriage wreckers, Don Juans, you name it.

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THE COURT: Doctor, when I am asking you a question and you are answering me I know that my tendency is just to speak to you and your tendency is to speak to me, but I think both of us should remember that these people in front of us want to hear the questions and the answers. Try to keep your voice up, Doctor.

Do psychopaths per se tend to be violent?

THE WITNESS: Yes.

THE COURT: In a physical way?

THE WITNESS: Yes.

THE COURT: You started to say something.

THE WITNESS: Because of their personality make-up they feel very frustrated. These psychopaths feel frustrated, and because of their frustrations they are apt to act out their desires or wishes at the moment, which also makes them quite impulsive. And we do know that frustration is the wet nurse to violence. And this is the reason why these psychopaths can be dangerous.

THE COURT: Mr. Duke, I think you ought to go ahead.

BY MR. DUKE:

Q You didn't mean by your answer to the preceding question to suggest that all criminals are psychopaths?

A No.

Q Doctor, have you in your practice been appointed

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by courts to examine defendants in criminal cases to determine their mental competency to stand trial?

A Yes.

Q Approximately how many times have you done that?

A Maybe altogether over the years a hundred times, maybe. I cannot say for sure.

Q Have you testified as an expert witness, as a psychiatrist in criminal cases before?

A Yes.

Q Approximately how many times roughly?

A This would be possibly a hundred times, too.

Q Have you done that in the federal courts?

A Yes.

Q In the City of New York?

A Yes.

Q Approximately how many times have you appeared in the federal courts in the City of New York as an expert witness?

A I may possibly have appeared here in the federal court and in the Eastern District maybe 50 times over the years or 60 times. I cannot say for sure really, so please don't hold me to any numbers.

Q Have you been employed by the Department of Justice?

A Yes.

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Q To testify as an expert witness?

A Pardon me?

Q To testify as an expert witness?

A Yes.

Q Approximately how many times?

A Maybe ten times, maybe 15 times. I am not sure. It must be 20 times.

Q Have you written any books on psychiatry?

A Yes.

Q What books have you written?

A My first book was Crime in the Human Mind; then Men, Mind and Power; Mind and Death of a Genius. These were all published by Columbia University Press. Then Report of 102 Sex Offenders; and a fifth book is Who Are The Guilty, A Study of Education and Crime; another book is The Road to Emotional Maturity; and another book is The Psychology of Crime.

Q Did you mention The Murdering Mind?

A No, I have not.

Q Did you write a book of that title?

A Yes, and The Emotional Care of Your Child, and The Murdering Mind, yes, that is right.

Q Approximately how many books have you published, Doctor, in psychiatry and crime?

A I believe it's nine or ten books. I am not quite sure.

Q Have you also written articles, scientific articles, published articles on the same subjects?

A Yes.

Q Approximately how many?

A 25 to 30 articles maybe.

Q Doctor, you were consulted, were you not, for the purpose of determining whether or not you had a medical opinion concerning the mental condition of one, Barry Lipsky?

A Yes.

Q In that connection did you review a number of letters to and from Mr. Lipsky?

A Yes.

Q Did you review a number of other documents relating to Mr. Lipsky?

A Yes.

Q Did you review some transcripts of testimony?

A Yes.

THE COURT: Did you ever talk to Mr. Lipsky?

THE WITNESS: No, I have not.

Q Doctor, I show you what has been marked as Defendant's Exhibit EE for identification. Would you look at that and tell me if that is one of the documents that you

reviewed?

A Yes.

Q Likewise, FF, Defendant's FF for identification, did you review that document?

A Yes.

Q II for identification?

A Yes.

Q LL for identification?

A Yes.

Q GG for identification?

A Yes.

Q Have you also examined or studied Government's Exhibit 7 in evidence?

A Yes.

Q Likewise, have you studied Government's Exhibit 6 in evidence?

A Yes, I think so.

Q Likewise, Defendant's Exhibit I in evidence?

A Yes.

Q Defendant's Exhibit N?

A No, I don't think I have seen this.

Q Would you look at the reverse side?

A Oh, yes, I have seen it, yes.

MR. EDWARDS: May I see that. Thank you.

Q And Defendant's Exhibit P in evidence?

A Yes.

Q Defendant's Exhibit K in evidence?

A Yes.

Q Did you in addition to the documents I have shown you, Doctor, read several other documents?

A Yes.

THE COURT: What other documents?

THE WITNESS: I went over the testimony which Mr. Lipsky had given.

THE COURT: In this case?

THE WITNESS: Of the case, yes.

THE COURT: In this case?

THE WITNESS: In this case.

THE COURT: You mean in this trial?

THE WITNESS: In this trial, yes.

MR. EDWARDS: I would like to clarify that. Is that the only testimony he has read?

THE COURT: I didn't understand that he was finished. What other testimony or other documents did you look at?

THE WITNESS: I'm sorry, but I did have several documents and Mr. Duke took them from me. No, I'm sorry, I have them here.

THE COURT: While you are looking at those, Dr. Abrahamsen, some of these documents that you showed him just now are in evidence, some were, I gathered from your description, marked for identification only. Are any of those documents offered and not received?

MR. DUKE: I don't believe any were offered, your Honor. I would like to offer them now, if I may, solely as a foundation for the doctor's opinion.

MR. EDWARDS: Pardon us for a moment, your Honor.

MR. DUKE: Your Honor, Exhibit HH for identification is the psychiatric report in Nassau County which is already in evidence, so I won't offer that again.

MR. EDWARDS: Your Honor, I'm having problems. EE seems to be some photostat of a physician's report or something. I can't even read it. It is totally unintelligible to me.

THE COURT: Maybe Mr. Duke can help us.

MR. DUKE: Your Honor, that was, I believe, a copy of some prison records.

THE COURT: I can understand Mr. Edwards' problem. I can't read it, either.

THE WITNESS: I can read it.

THE COURT: The fact that you can read it, Dr. Abrahamsen, is useful, but I am trying to know what it is.

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MR. DUKE: It's the medical record of Mr. Lipsky, prison medical records.

MR. EDWARDS: What does it show?

MR. DUKE: It shows certain dosages of drugs.

MR. EDWARDS: Can somebody tell what?

MR. DUKE: If the doctor can read it he can tell us.

THE WITNESS: I can tell you if you want me to.

THE COURT: Yes, go ahead, Dr. Abrahamsen, what is this all about?

THE WITNESS: These are hospital records from the time when Mr. Lipsky was in a particular institution and it shows in the main the medication he has received, and it shows that he received Valium and he has received Flurezepam. That is, really, the technical word for Dalmane. Dalmane is quite a strong sedative.

MR. EDWARDS: It's okay with me, your Honor.

xx (Defendant's Exhibit GG received in evidence.)

MR. EDWARDS: FF is okay.

xx (Defendant's Exhibit FF received in evidence.)

MR. EDWARDS: EE is okay.

xx (Defendant's Exhibit EE received in evidence.)

MR. EDWARDS: I is okay.

xx (Defendant's Exhibit I received in evidence.)

THE COURT: I take it when you say "Okay," Mr.

Edwards, you mean no objection?

MR. EDWARDS: Yes, your Honor, I'm sorry.

If we do oppose. This is a legal paper, your Honor. It has no conceivable relevance of any kind.

THE COURT: I am inclined to agree with you, Mr. Edwards. I am not quite sure how we deal with this. Apparently Dr. Abrahamsen has reviewed this document. What do we do? Tell him to put it out of his mind?

MR. EDWARDS: Your Honor, I propose to cross-examine him on things that are not in evidence that he has in his mind.

THE COURT: All right, I will not receive it.

Are we through with the documents?

MR. DUKE: I believe we are.

BY MR. DUKE:

Q Doctor, were you present in the courtroom during last week during Mr. Lipsky's direct testimony?

A Yes.

Q Were you present during Mr. Lipsky's cross-examination?

A Yes.

Q And his redirect?

A Yes, sir.

Q And his recross?

A Yes.

Q You heard every word of his testimony?

A Yes.

Q Did you from time to time consult with me and suggest certain questions that I should put to Mr. Lipsky?

A Yes.

Q Since your observing Mr. Lipsky in the courtroom have you had occasion to examine, to read, to study the transcript of Mr. Lipsky's testimony of last week?

A Yes.

Q On the basis of the study of the documents before you, Defendant's Exhibits N, P, I, EE, FF, GG, K, Government's Exhibit 7 and Government's Exhibit 6, on the basis of those documents, your observation of Mr. Lipsky in the courtroom and your study of the transcript of his testimony last week, are you able to form an opinion or have you formed an opinion to a reasonable medical certainty concerning whether or not Mr. Lipsky is mentally ill?

A Yes, I have been able to.

Q What is that opinion?

MR. EDWARDS: Objection, your Honor. Whether he is mentally ill is irrelevant.

THE COURT: No, let's go ahead, Mr. Edwards.

A My opinion is Mr. Lipsky is mentally ill.

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THE COURT: What I mean, we are trying to find out what he is going to say.

Q Is there a recognized medical description of his illness?

A Yes.

Q What is that?

A I believe that this man manifests the psychology and traits of a psychopathic personality.

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THE COURT: Does that have anything to do with the psychopath's ability to tell the truth?

THE WITNESS: Yes.

THE COURT: Why? I don't mean Mr. Lipsky. I mean a psychopath.

THE WITNESS: A psychopath or one psychopath has a wrong impression of himself. His self-image somehow has become distorted or impaired and, therefore, he is unable to see what kind of person he is, which he refuses to believe. Because he refuses to believe this type or this part of reality, he is unable to --

Yes, you make shake your head, my friend.

-- because of this, he is unable or he is not able to distinguish reality in the sense we see, that means the truth. And for this reason, such people, because they are self-serving, because they are highly egocentric and narcissistic, they carry out things in accordance with what they feel is best for them, and for this reason somehow the truth becomes a secondary matter.

THE COURT: All right.

Let's assume it becomes a secondary matter. Is it impossible for them to tell the truth when they are -- for a psychopath to tell the truth when he's put in a position where he is asked to tell the truth? Is it

impossible for him to do so?

THE WITNESS: It depends upon in what situation he is. If he is -- and there is the tragedy with such people -- if he is in a situation which is threatening to him, he usually does everything in order to get out of this threatening situation.

THE COURT: I understand that, but that isn't my question.

THE WITNESS: Well, it means, your Honor, that such a person has difficulty, extreme difficulty in facing or in trying to tell the truth about a situation. This is also one reason as to why it's so difficult to treat psychopaths and why we keep them in prisons or institutions.

Q Doctor, do they have the normal moral compunctions or controls restricting their desire to lie?

A No. They usually don't have the controls as the average person has.

Q Is a psychopath a rule-bound person?

A What?

Q Rule-bound. Does he live by rules?

A No, the only rule he has is his own self-preservation.

THE COURT: What?

THE WITNESS: Self-preservation.

THE COURT: I perhaps am not understanding, Doctor. It seems to me what you are saying about psychopaths can apply to a lot of us or all of us.

THE WITNESS: No, your Honor.

THE COURT: I happen to be concerned about my own self-preservation.

THE WITNESS: Yes, but I am sure --

THE COURT: Perhaps I am a psychopath.

THE WITNESS: But I am sure, your Honor, even if you and I, we try to preserve our own self-preservation, we also are able to take other people into consideration. We are able to behave in accordance with the rules and the laws which the psychopath doesn't see.

I would agree with you, your Honor, that this is very hard, possibly, to define -- to define the psychopath, but --

MR. EDWARDS: I'm sorry. I didn't hear that.

THE WITNESS: I'm sorry.

I said that's hard -- difficult to define the psychopath, but it's only because that we forget his self-centeredness and his egocentricity and this is really the basis for his anti-social or criminal behavior or any behavior which is not in accordance with the laws of

society.

THE COURT: All right. I'm sure that although this is a science, it's difficult to be absolutely black and white, isn't that so?

THE WITNESS: Well, I would say this, your Honor, that you are right, but may I be permitted, please, to add: It depends really upon the degree of the psychopath's personality.

THE COURT: That means you have got to get to the particular individual. It's hard to generalize?

THE WITNESS: Yes. For instance, ifyou have a person who goes around, steals and does everything, then, of course, this is a particularly difficult individual, or if you have a person, as we see so very often, frequently a person who is a drug addict, and who can't get rid of his addiction, such a person is, of course, to a high degree abnormally ill or sick.

THE COURT: Now, I take it from what you are saying that a psychopath is one who goes to the extreme. He has the same motives, self-interests that all of us do, but he goes to the extreme. I am sure I am stating it too broadly and too generally.

THE WITNESS: Yes.

THE COURT: I take it also that a psychopath is

somebody who is always very anxious to do whatever he can for his own advantage?

THE WITNESS: Yes.

THE COURT: But to an extreme, where he forgets other people. All of us are anxious to do whatever we can for our own advantage but, hopefully, we take into account the consideration of others.

Now, can a psychopath who knows that a particular cause of action is to his great advantage, and the cause of action I am talking about is telling a particular lie -- is it possible for that person to tell the truth under any circumstances?

THE WITNESS: If I may, please, your Honor, answer this question in this way: It really depends upon what kind of pattern of behavior this person in question has done before, because if a person has been going on for some time being unable to tell the truth or being involved with anti-social or criminal activities, then this pattern of behavior must be a clue or should be a clue to his present behavior.

THE COURT: A clue?

THE WITNESS: A clue, yes, and --

THE COURT: I was asking you whether it's possible.

THE WITNESS: I don't believe so.

THE COURT: Now, one of the things you said a moment ago or a little while ago -- I want to change the subject, Doctor -- you said you had on some ten or so occasions testified for the Department of Justice.

What kind of crimes were involved? Were those sex crimes?

THE WITNESS: No. No, they were crimes deciding whether or not certain members of the Mafia were able to testify when they had refused to do so.

THE COURT: Were able to testify?

THE WITNESS: Yes. They had claimed that they were psychotic or insane, and I was called in by the Justice Department to determine whether these people were really insane, as they claimed.

THE COURT: Were any of those people psychopaths?

THE WITNESS: Yes, I think so.

THE COURT: What was your view, that they could testify or not?

THE WITNESS: That they could testify.

THE COURT: Well now, they were psychopaths and you thought they could testify, which means testify and tell the truth, isn't that right?

THE WITNESS: No, that wasn't the question,

really. The question was whether or not they were mentally able to testify as witnesses, whether they were mentally able to testify.

THE COURT: That means understanding the oath and telling the truth, doesn't it?

THE WITNESS: Yes.

Q Doctor, in that case, was the basic question which you examined for the ability of these people to understand reality?

THE COURT: Understand what, Mr. Duke?

MR. DUKE: Reality.

MR. EDWARDS: I don't think he should lead, your Honor. It's too important.

THE COURT: I think it's all right on this question, Mr. Edwards. I don't know what the question means. Maybe the Doctor does.

Q Were you basically seeking to determine whether these people were psychotic?

A Yes.

THE COURT: What's the difference between being psychotic and being a psychopath?

THE WITNESS: A psychotic person is a person who is unable to distinguish what reality is. That means that he is confused. He may be disoriented with regard

to time and space and person. He is not able to understand the questions you put to him. He may have what we call a thought disorder.

THE COURT: Is a psychotic by definition also a psychopath?

THE WITNESS: No.

THE COURT: I would think it works the other way.

THE WITNESS: No.

THE COURT: It doesn't work either way? You can be a psychotic without being a psychopath?

THE WITNESS: Yes, you can be that.

Q You can be both?

A No. Nature isn't that way. It's either/or. Although it has been thought -- I would like to say this -- that sometimes a psychopath might show schizophrenic or psychotic features.

Q In that case he would be both, wouldn't he?

A Well, he could be a psychopathic personality with psychosis.

For instance, we have some people --

THE COURT: Mr. Duke asked you a question a few moments ago, and I would like to hear you restate your answer. He said, based on that list of documents and the

testimony that you hard and the other papers that you have reviewed, I guess other testimony or statements by Mr.Lipsky, what is your view?

THE WITNESS: Of Mr. Lipsky?

THE COURT: Yes.

THE WITNESS: My opinion about Mr. Lipsky is that he is a very sick man; he is very ill mentally, abnormally.

THE COURT: All right, Mr. Duke.

Q Doctor, when you answered the Judge a few minutes ago, you stated in your opinion it wasn't possible for a psychopath to tell the truth, to tell the truth if he perceived his interest as being in favor of lying.

A Yes.

Q Why is it impossible for a psychopath to do that?

A When a person is unable to tell the truth, it's very much because he doesn't have the understanding, the realization, the appreciation of what is truthful.

Q But do I understand you to say that a psychopath is a person who acts only in his own interest?

A Yes.

Q And therefore, by definition, it's impossible for a psychopath to act other than in his own interest?

A Correct.

Q Now --

THE COURT: "Impossible" is pretty strong.

THE WITNESS: Yes, I would agree with you, your HOnor. It's a very strong word, and I believe at least one would have to say it's highly doubtful whether a man with a high degree of psychopathy is able to tell the truth.

Q It is, however, possible for him to tell the truth when the truth coincides with his perception of his own self-interest?

A When it is in accordance with his own self-interest, yes.

THE COURT: Well, that, I would think, is easy, but what we are concerned about is a situation where the truth is not necessarily in accordance with his own self-interest. Well, I guess we are concerned about both possibilities.

Q Doctor --

THE COURT: I take it from what you are saying, Doctor, that a psychopath will think of himself in everything he does, forst and foremost, to the exclusion of others, but this is a generalization and there may be situations in which a psychopath will tell the truth, either because it's in his own self-interest to do so or

even when it isn't to his own self-interest to do so. You can't exclude the latter possibility, I take it.

THE WITNESS: Your Honor, I am not quite sure about this. I would love to agree with you, your Honor, and I would love to say that you are right.

THE COURT: I don't want you to agree with me, necessarily.

THE WITNESS: But I am not sure whether we can say this.

My experience with psychopaths is a very sad one, very sad one, and I would say this, that with so many people, psychopaths I have dealt with in prisons and in the courts, I must say that their telling the truth is very questionable.

THE COURT: But certainly -- I guess this is obvious -- if it's in his own self-interest to tell the truth he will tell the truth?

THE WITNESS: If it's in his own self-interest, yes.

THE COURT: That's the assumption?

THE WITNESS: Yes.

Q Doctor, does the psychopath have a distorted perception of his own self-interest?

A Yes, and it's because of this distorted self-

interest that he is unable to get a realistic picture of what is going on around him and to behave accordingly.

Q Doctor, could you summarize --

THE COURT: So that he may think it's in his self-interest to do something when it really isn't, so he does it. But, on the other hand, he may think it's not in his self-interest to do something which is really in his self-interest, so he won't do it.

This is just an observation.

THE WITNESS: Yes. But in addition to this, your Honor, I would like to say this: That because a psychopath is very vulnerable --

MR. EDWARDS: "Very" what?

THE WITNESS: Vulnerable, v-u-l- --

-- psychologically speaking, he rejects blame for anything he has done and therefore blames everyone else around him, which adds to the picture of a psychopathic person.

THE COURT: I would think we ought to be reaching the point fairly soon where it's Mr. Edwards' turn.

Do you have a few more questions?

MR. DUKE: Your Honor, I haven't yet got to the poi where he so characterizes Mr. Lipsky.

THE COURT: Well, let's get to that.

Q Would you, briefly and compactly, tell the Court of some of the reasons why you would characterize Mr. Lipsky as --

MR. EDWARDS: Objection, your Honor. I think we ought to hear all the reasons, not briefly and compactly, and we ought to hear everything he intends to say.

THE COURT: All right. You tell us, Dr. Abrahamsen, everything about why it is you have the views you have about Mr. Lipsky.

A This is a man who is exceedingly self-centered. He doesn't have insight into himself, in spite of the fact -- and I am going on here to give you the highlights -- in spite of the fact that he has been using drugs from since 1967 he doesn't consider himself a drug addict. I believe this is a lack of insight or that there is no insight at all.

If you remember, this is a man who not only has used drugs but in particular used cocaine. He has stated that he used cocaine up to twenty times a day, but knowing the number of times a cocaine user uses -- thinking that the use of cocaine passes very swiftly, lasts for only ten or fifteen minutes, we might think that he has used cocaine possibly fifty to sixty times a day,

which means that in this respect he hasn't -- no, it means really that he is so dependent on drugs that his veracity -- no, I wouldn't say his veracity -- that a sserious -- that a serious personality problem is behind this very strong drug addiction.

In addition to this, he has been very much interested in horror movies. He has had nightmares.

THE COURT: I like horror movies, Dr. Abrahamsen.

THE WITNESS: Well, that's all right, your Honor, to like horror movies.

The question is, your Honor, how often do you look at them and how much fascinated are you with it?

Don't get me wrong, please.

THE COURT: I am not sure I want to go into that.

I am sorry to interrupt. Go ahead.

A (Continuing) If you remember, he acts almost like an infant being absorbed in his own needs. That is the reason why he is also pleasure-seeking, because drugs give him that pleasure.

He has, as the record will indicate, written bad checks on his mother, been in various criminal undertakings. In spite of his having received probation where he promised to be good and not do anything wrong,

he continued to use drugs and later became involved in certain activities.

He must be characterized not only as a drug addict but also as a swindler and as a con man because of the swindling he has done, and also as a con man.

Seeing this broad variety of behavior he has shown and also his violence, as also shown in the letter he wrote to -- in the prison on July 26, 1972, where he says that "I am violent, vindictive," this man leaves me with the final conclusion that we are dealing with an exceedingly ill man, who may be characterized as suffering from a psychopathic personality.

THE COURT: Do you think, Dr. Abrahamsen, if you were able to spend some time with him face-to-face, on a personal basis -- is there any reason for you to think that that might lead you to form other or different conclusions?

THE WITNESS: No. I don't think so, your Honor, because I believe that he is so self-serving and so defensive that I would not be able to get anything out from him.

Also, which he said himself, that the psychiatric interview to him was a farce.

THE COURT: All right.

Mr. Duke, is there anything else?

Q Do you mean by that that he couldn't be expected to tell you the truth?

A This is the implication, that he didn't take it serious.

Q Would it be useful to you to explore with him his nightmares, his fantasies?

A Yes, but --

MR. EDWARDS: Your Honor, I haven't heard any testimony about fantasies, in the trial or otherwise. I haven't heard a word about it.

THE COURT: We don't need to go into that, Mr. Duke.

THE WITNESS: But, your Honor --

THE COURT: No, we don't need to go into that.

MR. DUKE: Your Honor, I can go into more, but I think that summarizes it.

THE COURT: It seems to me we have covered a deal of ground. We will take five minutes.

(Recess)

T5

BY THE COURT:

Q Dr. Abrahamsen, just before we took this short recess you listed the points which were the basis for your conclusion. You didn't mention anything about your observation of Mr. Lipsky when he was on the witness stand. Would you have reached the same conclusion without having observed him on the witness stand?

A No, I don't think so.

Q What did you observe?

A Particularly the selective memory he had.

Q The selective memory?

A That his memory was selective. I followed him very carefully when he was examined by the prosecutor, and the answers from him or by him, by Mr. Lipsky, came quite fast and very well. When the defense attorney, however, asked him questions, there were quite many hesitations and he would ask, "What was the question?" "What do you mean by that?" Et cetera. These are matters which really are not reflected in court proceedings, because pause and hesitation is not given. I received the impression that his memory was quite selective.

Q I guess I understand what you're saying, but I'm not sure just where this gets us. I have put witnesses on the stand in the course of my 30 years as a lawyer and

I never put a witness on the stand until I had worked with him at some length and he knew what questions I was going to ask and he knew what answers I wanted. In fact, I had a witness or two on occasion who answered the next question before I got to it. So I would suppose it's not surprising at all that a witness on direct examination answers the question promptly and on cross-examination when he is dealing with somebody who he recognizes inevitably is trying to prove something to the contrary of what he said on direct, that the witness is cautious and slow and reluctant and hesitant. I don't see how this ties into your conclusions. Maybe you can explain it.

b2 A My impression was this, that in reasking the question or not hearing what was said, in asking, "What do you mean by that?" He was really trying to gain time so he could think of what to say.

Q And this, it seems to me, is typical of a witness who is not a psychopath. He gets a hard question and he wants to think about it, so he stalls, like a judge stalls when a hard question is put to me. I ask the lawyer to put it again so I can think about it.

A Yes, but this was more than stalling. If one went over his testimony it really surprises me, because I was thinking of leaving before redirect came, and then I thought

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I possibly would like to listen and see what is happening and see if there was any difference, and I was surprised myself, and I do not believe that on the redirect that the prosecutor had gone over these questions in detail. I do not know, of course. But since it was redirect, it was something in addition to what had been going on before.

MR. EDWARDS: May I --

THE COURT: No, you will have your opportunity. You are going to spend a little time, Mr. Edwards, with this witness. I hope you can stick to your 20 minutes. But, in any event, it does seem to me that we might send the jury out to lunch and bring them back at 2 o'clock. So I would ask that we have Dr. Abrahamsen take a seat in the back of the room.

MR. EDWARDS: Your Honor, it will not be 20 minutes; it will be longer.

(Witness leaves the witness stand and takes a seat among the spectators in the courtroom.)

(Jury in box.)

THE COURT: Well, Mrs. Crossdale, ladies and gentlemen, I can assure you that we have been working on matters that I have to deal with the lawyers on. It's close to lunchtime and I propose to excuse you for lunch. The lawyers and I still have to do a few more things. But there

is no need for us to keep you here while we are doing that, so let's excuse you for lunch at this time and we will start again at 2 o'clock.

(Jury excused.)

D A V I D A B R A H A M S E N, resumed.

THE COURT: Mr. Edwards.

CROSS EXAMINATION

BY MR. EDWARDS:

Q Sir, you testified that Lipsky's enjoyment of horror movies was a factor in your conclusion that he was a psychopath?

A My conclusion was not based on his enjoyment of horror movies.

Q Well, did the horror movies have anything to do with it at all?

A It was a small little part of it.

Q Little part?

A Little part, yes.

Q Would you say a totally insignificant part?

A No.

Q In other words, it was a significant part?

A No, I would not say, sir. I do believe that if you're going to take out symptoms you really have to bring out

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all the symptoms this man has shown in this connection.

Q Sir, I am asking you only about one symptom. He enjoyed watching horror movies. I am asking you if this was a significant part of your material on which you came to your conclusion.

A In addition to other symptoms.

MR. EDWARDS: I request he be ordered to answer my question.

THE COURT: He wants to know what part the interest in horror movies played in your conclusion.

THE WITNESS: I think some part, yes.

Q Some part?

A Yes.

Q Would you say a significant part?

A No.

Q Would you say an insignificant part?

A No.

Q Are you familiar with a program called Sesame Street on television?

A Yes, indeed.

Q It's a program for children, is it not?

A Right.

Q And many monsters and mythological characters appear? Is that correct?

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A Yes.

Q This is on national television?

A Yes.

Q Would you say that parents who permit their children to observe Sesame Street are in a way showing any psychopathic tendencies?

A No, I have followed Sesame Street very much, indeed, and I think we're talking about two different things.

Q I would appreciate it if you would simply limit yourself to answering my questions.

Would you say that parents who permit their children to observe Sesame Street are exhibiting any psychiatric tendencies?

A I can only answer this question with an explanation; I cannot answer this question yes or no.

Q Are you saying they may be psychopaths or they may not be?

A There possibly could be.

Q Does the fact their children are watching this program give you any reason to think they are psychopaths?

A No, not necessarily.

Q That is your answer?

A I don't believe, really, that you should try to put this matter with regard to Sesame Street in a certain

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category. I'm sorry.

MR. EDWARDS: I'm going to request--

THE COURT: No, Mr. Edwards, I think he has answered your question. He said "No, not necessarily." I take it that this might or might not be something that he would fit into a mosaic if he has other facts.

MR. EDWARDS: All I am asking is, as with every other witness, he be required to limit himself to answering my questions.

THE COURT: Yes, I think Dr. Abrahamsen we can move faster if you will stick to the question. I don't think you need to concern yourself about explaining. There may be questions which you will have to explain to answer, but I think after the hour and a half that we have had together we understand your problems and your position and I don't think you need to concern yourself with an explanation. I think we can move along if you stick to the question and then if you need to explain it later you can tell me so, or your lawyer can bring it out.

b3

Q Are you familiar with horror programs that are played on channel 5 on television?

A Yes.

Q You know that channel 5 is a commercial operation, don't you?

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A Yes.

Q Would you assume from the number of programs that are played on channel 5 that there must be a very lage number of people watching those programs?

A I do not know.

Q Well, now, there is no divorce, is there, between psychiatry and common sense necessarily?

A I do believe your question is very strange indeed.

Q I see. In other words, there is something nonsensical concerning my question?

A Concerning your question?

Q Channel 5 is a commercial operation.

A Yes.

Q Is it your understanding that commercial television stations make money from advertising?

A Yes.

Q Isn't it obvious to you that advertisers would not advertise on television unless large numbers of people were watching the programs?

A Yes.

Q Isn't it obvious to you, therefore, that very large numbers of people must be watching those horror programs on channel 5?

A I do not know the statistics, but I think you have

a point.

Q You think I have a point?

A Yes.

Q Would you suppose that those horror programs on channel 5 are supported by vast numbers of psychopaths?

A It could very well be that some of them are psychopaths. I don't know.

THE COURT: Mr. Edwards, I am persuaded that just because somebody watches a horror program that that in and of itself does not have much significance?

MR. EDWARDS: What I'm trying to do, your Honor, I think the point is obvious, I'm trying to find out if there are any qualifications to giving the testimony here.

Q Are you familiar with the story of Little Red Riding Hood?

A The story?

Q Yes.

A Yes, of course.

Q The wolf ate Little Red Riding Hood's grandmother? Is that correct?

A Yes.

Q And that is a rather horrible thing, isn't it?

A Yes.

Q Would you say that parents who tell their children

about Little Red Riding Hood are exhibiting any psychopathic tendencies? Just yes or no.

A I can't answer that question in that method. I think I must have a right to say something.

THE COURT: Go ahead, Doctor.

A This is the reason it has been stated many, many years ago that this particular story you mentioned was a very sadistic story and should never be told to children.

Q Do you think the people who tell it to children are psychopaths?

A They possibly could have been, or sadistic, at least, some of them.

Q Sir, if I asked you whether people who ride the subway in the morning are psychopaths, I take it your answer would be they possibly could be?

A Well, I have not examined them, so I don't know.

Q Your answer means absolutely nothing, does it, other than the fact that anyone may be a psychopath?

A No, not anyone, certainly not.

Q Well, does the telling of one's children about Little Red Riding Hood have any tendency to indicate to you that the person telling the tale has any psychopathic tendencies whatever?

A I'm sorry, sir, but it's hard to answer this question.

nmahll Abrahamsen-cross

It can be in singular instances, it can be. Generally speaking, I wouldn't think so.

Q Well, now --

MR. EDWARDS: Pardon me a moment, your Honor.

Q Sir, you have a letter or a card there with a claw on it?

A Yes.

Q Could I have the letter?

A Yes.

MR. EDWARDS: This is Exhibit N in evidence.

Q It is a letter to someone named Dean, and it is signed with a claw and the name "Wart"; is that correct?

A Yes.

Q Now, is this letter some significant part of the information on which you relied in forming your opinion that Mr. Lipsky is a psychopath?

A I would say that he shows in that particular signing, signing himself as "Wart", with a claw, that some sadistic tendencies are expressed here.

Q Now, sir, would you answer my question?

MR. EDWARDS: May the question be read?

(Question read.)

Q Sir, would you answer the question?

A Yes,

Q Sir, have you known many children in your lifetime?

A Pardon me?

MP 2 Abrahamsen - cross

Q Have you known many children in your lifetime?

A Yes.

Q Have you ever had nicknames with them?

A Sometimes, yes.

Q Have you ever played the sort of games with children in which you have special names, and the children have special names?

A Sometimes, yes.

Q Now, you recall the testimony, do you, that Mr. Lipsky, at his house in Florida, used to sit around with a lot of friends, watching horror programs?

A Yes.

Q And each of them had a nickname taken from the program; is that right?

A Yes.

Q Would you say they are all psychopaths?

A No; I wouldn't say that.

Q Now, you testified a moment ago that had you not seen Mr. Lipsky testify, you would not have been able to form the same opinion; is that correct?

MR. DUKE: Objection.

MR. EDWARDS: I am asking the question.

MR. DUKE: That is misleading.

THE COURT: No. Overruled.

MP 3 Abrahamsen - cross

A By and large, I think I would have been able to form the same opinion, yes, even if I had not seen him testify.

Q Well, when the Judge asked you whether you would have been able to form the same opinion without seeing him on the stand, you said no?

A Yes. It was in connection with his selective memory.

Q In other words, the thing that enabled you to form your opinion was his selective memory, seeing him on the stand; is that right?

A No; it wasn't.

Q You did say, however, did you not, that you would not have been able to form the same opinion without seeing him testify?

A No. I believe it was a misunderstanding if I used such an expression, sir. I only meant in connection with his selective memory, because it was this that caught my attention.

Q Now, sir, when you came to this conclusion about his selective memory, were you aware that it is the practice of lawyers putting witnesses on the stand to prepare them thoroughly?

A Yes, indeed.

Q You were aware of that?

A Yes.

MP 4 Abrahamsen - cross

Q And were you aware that a cross-examiner normally does not have the opportunity to do that?

A Yes.

Q Now, were you aware that when someone puts a witness on the stand on redirect examination, he is entitled to prepare him in the same way as he would for direct?

A Yes; he is entitled to it. That's very correct.

Q Well, now --

A But --

Q Why did you, sir, form the conclusion that I had not prepared him for redirect examination?

A Sir, I did not mean this as an offense.

Q I didn't put it that way, but you said that you assumed that he had not been prepared for redirect. Why did you assume that?

A Because he was examined by Mr. Duke, and the redirect examination followed just after.

Q Well, now, if you were now told that I did prepare him for redirect --

A Pardon me?

Q If you now are told that I did prepare him for redirect in the same way I prepared him for direct, is there anything whatever left of your point about him showing a selective memory, or is it out the window?

A No; I don't believe it's out the window, because he has also to do with other facts of the case.

Q And what are the other facts that his selective memory has to do with?

A Well, it's the lies he has been telling.

Q The lies he has been telling?

A Yes.

Q How do you know he has been telling lies?

A Well, this is what I heard in the court here.

Q You mean, you heard him so so; is that correct?

A Yes.

Q And when you heard him say that he had told lies, you believed him; is that correct?

Sir, could you answer my question?

A Yes; I heard you. Sometimes one has to believe certain things, but it throws a strange coloring over the man.

Q Sir, when a man repeatedly lies, do you come to the conclusion that it is sort of a pathological condition?

A Yes.

Q Would you say that a witness on the stand who repeatedly evades questions is showing a pathological condition?

A I wouldn't say a pathological condition, but he is somehow trying to avoid telling the truth.

MP 6 Abrahamsen - cross

Q Sir, would you characterize your answers to my questions as extremely evasive?

A I wouldn't say so.

Q Well, sir, I asked you, did I not, just a moment ago, when Mr. Lipsky testified he was lying, did you believe him, and you did not answer my question, did you?

A You asked me whether or not -- What did you say, please?

Q Sir, you do not consider, do you, that you are exhibiting selective memory?

A No; I do not, hopefully.

MR. EDWARDS: May we have the last question before this read?

(Record read.)

Q Now, what I am asking you, Doctor, is, when Mr. Lipsky said he was lying, did you believe him? Will you answer that question?

A Yes. I believed him.

Q You believed him?

A Yes.

Q You regard him as a psychopath, do you?

A Yes.

Q And psychopaths therefore sometimes tell the truth; isn't that correct?

MP 7 Abrahamsen - cross

A It depends upon whether it serves their own self interest.

Q Well, sir, do you have some means of determining --

THE COURT: Let's go back to that last question. Will you read the last question?

(Question read.)

A Yes, depending upon that.

Q Depending upon what?

A Depending upon whether it serves their self interest.

Q Sir, do you have any means at your disposal for determining at any given moment what is in Mr. Lipsky's self interest and what is not?

A No.

Q Thank you.

Sir, when you were in the courtroom -- Incidentally, you don't attach any significance, do you, to the fact that Mr. Lipsky used various nicknames? That's of no significance, is it?

A Well, he had to use various aliases, if that's what you mean by nicknames.

Q Sir, are you trying to answer my question?

A Yes; I am trying to, but I am asking -- nicknames to me is different from aliases.

Q Aliases?

MP 8 Abrahamsen - cross

A Aliases. Pardon me.

THE COURT: What is the difference between a nickname and an alias?

Well, a nickname is when a child calls something else, and an alias is when an adult does it for certain purposes.

Q I can't hear you, sir.

THE COURT: He said an alias is when an adult does it for certain purposes.

Does that mean -- Is there anything sinister about it?

THE WITNESS: It depends upon what the situation is. For instance,if he writes a letter and signs his name, signs the name of another person, that is different from using a nickname.

Q Allright --

THE COURT: I have a very old aunt who started calling me, when I was about two days old, by a particular name. Whenever I write to her, I sign that name to the letter. It's an alias; is that right? She is the only person who knows what this name means. It is not a nickname. I wouldn't regard it as a nickname, but it is a name I use when I correspond with her.

THE WITNESS: But is is a name, really --

MP 9 Abrahamsen - cross

THE COURT: And I use it for a particular purpose, because she gets enjoyment out of it. Doesn't that make it an alias?

THE WITNESS: No; it is an endearing name. This is different.

THE COURT: It's different from an alias?

THE WITNESS: I would say so, yes.

MR. EDWARDS: May I explore this, sir?

Q When Mr. Lipsky wrote a letter to this young boy named Dean and signed it "Wart", do you have a serious professional medical opinion, sir, as to whether that was an alias, an endearing name or a nickname?

A On the selecting of the term, the name "Wart" is to me quite strange.

Q Sir --

A I have an insight of what the name Wart is.

Q Doctor, do you know where Mr. Lipsky acquired the nickname Wart?

A No.

Q You continue to think that the fact that he used that nickname is a factor of psychological significance?

A Yes. Not very significant. Don't get me wring. It is of some significance.

Q Would you say that it is without a scintilla of

significance of any king whatever?

A I believe it has some slight significance. Some slight. Very slight.

Q Doctor, when you imagine something, as you have just -- You have been talking about a lot of things that have slight significance. Would you mention one thing concerning Mr. Lipsky that you think is enormously significant? Can you do it without notes?

A Oh, yes. Absolutely.

Q What is it?

A His drug addiction.

Q What is it?

A His drug addiction.

Q Sir, how do you know he is a drug addict?

A From the medical records and from what he has stated here on the stand.

Q And when he told you that he took drugs, you believed him; is that right?

A Certainly.

Q And you consider him to be a psychopathic liar?

A Pardon me?

Q Do you consider him to be a psychopathic liar?

A Yes.

Q All right. Now, sir, is there anything else of

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enormous significance in connection with --

A May I only say this, that the reason why I thought he was a drug addict is also taken from medical records that we had.

Q And that is information that he gave to them?

A No, no. This information is written by the doctor, that he was given ninety tablets of Valium and sixty tablets of Dolmain.

Q Are those addictive drugs?

A Yes.

Q Are they tranquilizers?

A Well, I would say this, that Dolmain is a very strong sedative, and Calium is a tranquilizer.

Q Do you think that when people take sedatives and tranquiliers that that is a very strong indication that they are psychopaths?

A No; they are not necessarily psychopaths.

Q Sir, what I am asking you is, can you tell me some very, very significant thing concerning Lipsky which leads you to believe that he is a psyc hopath?

THE COURT: Other than drugs? Is that your question?

MR. EDWARDS: No. I will ask one more question on drugs.

Q There is nothing on any of those medical reports

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which says they are giving Lipsky cocaine, is there?

A No.

Q And the only information that you have that Lipsky ever took cocaine is that Lipsky said so; isn't that correct?

A Well, you don't treat a person addicted to cocaine with cocaine. You treat him with other medication.

Q Sir, were you answering my question?

A What is your question?

(Question read.)

A It was stated in the medical report, yes.

Q And Lipsky said so?

A Yes.

Q And he is a psychopathic liar; is that correct?

A Yes.

Q All right. Now, sir, you have testified without interviewing or personally examining Mr. Lipsky, have you not?

A Correct.

Q What is the American Psychiatric Association?

A What is the American Psychiatric Association?

Q Yes, sir.

A It's an association of psychiatrists.

Q Are you a member?

A Yes.

Q Are you in good standing?

A Yes.

Q And would you say that the American Psychiatric Association is the leading professional organization of psychiatrists in the country?

A Yes.

Q Now, I want to read you something from a publication of theirs, and I want to ask you if you agree with it or not.

Are you familiar with the American Journal of Psychiatry?

A Yes.

Q Now, I want to call your attention to something that is printed in the issue of April 10, 1970, and it is headed, "Physician's Statement on Guidelines for Psychiatrists: Problems in Confidentiality."

A I didn't hear the last.

Q "Problems in Confidentiality'. I am reading from the last paragraph on page 1543, which appears to be the page number of the magazine. I will read this in its entirety:

"A review of newspaper articles of psychiatric testimony in spectacular trials and of national surveys of psychiatric opinion of prominent national figures in years past reveals many distressing features of the rule that psychiatric testimony is to be based solely on direct and private examination of the patient.

"Manifestly it is not enough to observe an individual in a courtroom or to reach conclusions from the reports of others in the media or elsewhere. Only by adhering to the rule and by exercising dignity, wisdom and common sense can the psychiatrist expect to be perceived as an expert witness."

Now, sir, do you think that that is a correct proposition?

A I think that by and large, yes, but I must tell you this, that there has been a great deal of discussion about this particular paragraph, about which I know very well indeed, and particularly where a patient isn't available for examination, if the doctor has testimony, previous psychiatric reports, he is able to, I believe, to form an opinion on a particular case.

Q Now, what previous psychiatric reports were you in possession of when you made this conclusion or study or whatever you wish to call it of Lipsky?

A These were the psychiatric reports which were made in December 1972.

Q In Nassau County?

A Right. Right.

Q Is there anything in those reports that indicates to you that Mr. Lipsky is a psychopath or a psychopathic liar?

A No; I don't believe so.

Q Thank you, sir.

Now, may I move on to something else.

The whole time you saw Lipsky in the courtroom, Mr. Nesland and I were also here; true?

A Yes.

Q And you saw us?

A I saw you, yes, of course,

Q And whatever else you may think, would you concede that I do not appear to be a psyc hopath?

A No; you do not appear to be a psychopath.

Q Now, nonetheless, although I am not a psychopath, if I wanted to say something that was a lie, I could if I wanted to, couldn't I?

A Yes.

Q And if I said a number of things to you, you would not necessarily be able to tell whether they were true or not; isn't that so?

A Yes. Are you referring to some particular aspect or what?

Q Very well. We will take three very rapid examples.

I have a brother named James.

Is that true or not?

A I don't know.

Q I have a brother named James who is 147 years old.

Is that true or not?

A I would think it is not true.

Q Indeed, you could conclude, could you not, beyond a reasonable doubt, that that is false?

A Right.

Q And the way you would arrive at that conclusion, I take it, is through your common sense in examining the inherent improbabilities of what I said; isn't that correct, Doctor?

A No. No; it doesn't need any psychiatric learning to understand that.

Q And, indeed, anyone on the jury could come to that conclusion precisely as easily as you could; isn't that correct

A Yes.

Q All right. Let me tell you something else.

In the summer of 1973, when I was traveling in Canada, I saw a total eclipse of the sun.

Is that true or not?

A I believe there was an eclipse, but I am not quite sure.

Q Well, you certainly know whether I saw it?

A Well, whether you saw it, this could possibly be. I don't know.

Q You don't know whether I am telling the truth or not, do you?

A I don't.

Q And isn't it true that if you were entrusted with the task of finding out, the way you would find out is, you would try to locate all the relevant information that you could, and you would examine it and sift it and try to form a conclusion as to whether or not I was telling the truth?

A Yes.

Q And in that way you would have no advantage over any member of the jury, would you?

A No.

Q Now, sir, shifting from me to Lipsky, the psychopath, if I read to you particular lines of testimony that he has given, you can't tell whether they are true or not, either, can you, any more than you can with mine?

A I will say this: that this would depend upon the behavior pattern you have shown before and the behavior pattern Mr. Lipsky has shown.

Q All right. Now, let me read you from testimony of Mr. Lipsky:

"Q And in around 1970 did you come to New York for a few months?

"A Yes; I did."

Now, do you have any means personally of knowing whether that is true or not?

A No.

Q The same position you are in when I tell you I have a brother named James; isn't that correct? Isn't that true?

A Yes.

Q Now, sir, isn't it fair to say that you have concluded that Mr. Lipsky is a psychopath on the basis of certain past behavior of Mr. Lipsky's? Isn't that true?

A Yes.

Q And this past behavior included participating in a murder; is that correct?

A Yes.

Q And this past behavior includes writing checks in his mother's name; correct?

A Yes.

Q This behavior also includes some kind of confid-nce scheme in Florida involving taking $20,000 from a man by pretending that he was going to deliver some cocaine, isn't that so?

A Yes.

MR. DUKE: I object, your Honor. There is no such testimony in the record.

MR. EDWARDS: I think it was elicited on cross, that

he flew to Puerto Rico.

THE COURT: I don't know that cocaine was involved.

MR. EDWARDS: Narcotics of some kind. I will take that amendment.

Q Sir, your testimony that Mr. Lipsky is a psychopath also, I take it, depends on his testimony that in New York he was engaged in narcotics traffic; isn't that correct?

A Yes.

Q Let me shift to another topic for a moment, and let me ask you this:

You say that you have been associated with a number of prisons?

A Yes.

Q And in that time you have examined at least a thousand psychopaths?

A Yes.

Q Yes?

A Yes.

Q Wouldn't you say, sir, that a very large proportion of the inmates in New York in Federal penitentiaries are psychopaths?

A Yes. Quite a large proportion.

Q And isn't it a fact, sir, that Mr. Lipsky's crimes, which I have just listed to you, are really a very much more

significant part in your conclusion that he is a psychopath than these things we have referred to previously concerning nicknames, horror programs and selective memory?

A Yes. You have a good point there. But I also think that there were some happenings in his childhood and previous which hasn't been mentioned, which I have not had the opportunity to mention to you.

Q Now, sir, are you familiar with a publication --

MR. EDWARDS: May this be marked.

xx (Government's Exhibit 29 marked for identification.)

THE COURT: Have you marked the other publication which you read from?

MR. EDWARDS: No. Thank you, your Honor. I will do that now.

May we mark the page from the American Journal of Psychiatry that I referred to earlier, page 1543, as the next exhibit for identification.

xxx (Government Exhibit 30 marked for identification.)

Q Now, sir, are you familiar with something called the Diagnostic and Statistical Manual of Psychiatric Disorders published by the American Psychiatric Association?

A Yes.

Q And isn't it true that they have now eliminated the term "psychopath" as a mental abnormality?

A Yes.

THE COURT: Which term?

MR. EDWARDS: Psychopathic personality.

Q And isn't it true that they are now utilizing something, a definition referred to as an anti-social personality? Is that correct?

A Yes. May I --

Q No. That is all I asked you.

If they were utilizing that definition is what I asked you, sir. Are they?

THE COURT: He has answered.

A Yes.

Q All right. Next question, sir:

Is it true --

THE COURT: Dr. Abrahamsen, if you feel at the end of your testimony that you want to say anything else, you may do so. What we are trying to do is not to impair the course of your testimony now.

Q Sir, isn't it true that under mental disorders they also list something called dissocial behavior?

A Yes.

Q And is this their definition of it:

"This category is the individuals who are not

classifiable as anti-social personalities but who are predatory and follow more or less criminal pursuits, such as racketeers, dishonest gamblers, prostitutes and dope peddlers."

Now, sir, were you, without examining Mr. Lipsky, able to determine that he is an anti-social personality rather than a dyssocial behavior personality?

A I think he is both.

Q All right, sir. Would you say that a person who participates in murder -- singular, murder -- who participates in a murder and who sells narcotics or works for a man who sells narcotics and who participates in confidence schemes and who forges checks is pretty obviously an anti-social personality?

A Yes.

EOT 6 am

T7 · Q That is obvious, isn't it?

A Yes.

Q And, sir, it's equally obvious, is it not, that the testimony of such a person in court should be examined very carefully and with particular scrutiny by the fact finder?

A By what?

Q By the fact finder.

A Yes.

Q That is perfectly obvious?

A Yes.

Q And, sir, in your judgment is this something you have to be a psychiatrist to be able to figure out?

A I believe so.

Q You mean the average layman in your opinion would not understand that a murderer, a trader in narcotics, a confidence man and a forger was a man whose testimony had to be examined with scrutiny? The average person couldn't understand that?

A Well, I believe an average person could possibly understand that, but I believe that the psychiatrist understands the psychodynamic behavior.

Q Sir, I was not asking you whether the average person understands the psychodynamic behavior; I was asking you

whether it would not be perfectly obvious to the average person that this man as a general proposition is less trustworthy than an ordinary law abiding citizen?

A Yes.

Q Perfectly obvious? Now, sir, would you say that all human beings are unique?

A All human beings? No.

Q You mean they are not unique?

A In what way do you mean? I don't understand you.

Q Every single human being in the world is different from every other human being?

A Yes.

Q That is true when they are born?

A Yes.

Q And this is increased by the forces of their environment?

A Correct.

Q Would you say that in the course of a mature lifetime with the exception of persons who are lunatics themselves, every person acquires certain insights into other people?

A Right.

Q And each person acquires his own insights into other people? Isn't that right?

A Sometimes, yes.

Q Unless he is a lunatic, he does?

A He does not need to be a lunatic; he could be neurotic.

Q Each person through his own experience acquires his own insights as to other people?

A Correct.

Q It certainly is true that a man who enters the profession of psychiatry acquires certain insights as a result of his experience that, let us say, a waiter in a Pullman car would not acquire?

A Correct.

Q Isn't it a fact that a waiter in a Pullman dining car will as a result of his experience acquire certain insights into other people that a psychiatrist will not have? Isn't that true?

A It depends, really --

Q You mean you question whether a waiter in a Pullman dining car as a result of a long career learns anything about people that you don't know?

A Well, it would be a presumption of mine to think so, but I should go along with you and agree with you for the time being.

Q Well, you are agreeing with me because what I say

is true?

A Yes.

Q And if one were, for example, a teletype operator--well, withdrawn.

A man who is an auditor dealing with accounting records, now, he in the course of a professional career will acquire certain insights into human motivations that would not be acquired by a psychiatrist? Isn't that so?

A I'm not sure about that, really. I don't think so. It depends -- I hate really to say no or try to talk to you, because you get upset if I don't answer you yes.

Q Am I upset?

A No, but I don't want to get you upset in any way.

Q Do I have a low -- what is it called --

A Tolerance.

Q -- a low tolerance or frustration?

A No, I wouldn't say so.

Q Now, sir, would you say that every occupation and every calling contributes to the non-psychotic who follows it some understanding of human nature?

A Yes.

Q And this is an understanding that some other callings and professions do not acquire?

A Yes.

mmh5 Abrahamsen-cross
redirect

Q Would you say,sir, that it is not a poor way to decide an issue of fact as to whether somebody is lying or not to pool the resources of, let's say, just let's say as a hypothetical, 12 people, all of whom have varying experiences of life and you ask them to sit in a room and pool their experiences and come to a conclusion? Does that sound like a pretty sound system?

A Well, yes, but it depends really upon what case they are deciding.

Q Well, sir, again I am excluding from my hypothetical lunatics and psychotics of all kinds. Other than those categories of persons, wouldn't you say that any 12 people you can find over the age of 18 are capable of seeing that the testimony of Mr. Lipsky has to be reviewed very carefully indeed?

A Yes.

MR. EDWARDS: Thank you.

THE COURT: Mr. Duke.

MR. DUKE: Well, your Honor, I don't want to prolong this.

REDIRECT EXAMINATION

BY MR. DUKE:

Q Dr. Abrahamsen, you have relied upon a number of incidents in Mr. Lipsky's life, have you not, in reaching

your conclusion?

A Yes.

Q That have not been discussed hereat all?

A Right.

Q Among those did you consider significant his behavior with respect to the scales?

A Yes.

Q And his shooting out the television set?

A Yes.

Q And holding the gun to his brother's head?

A Yes.

Q Did you consider significant the letter he wrote to his sister in which he describes his violence?

A Yes.

Q Did you consider significant the letter he wrote to his mother in which he told his mother that his violent temper was going to get him in a lot of trouble while in jail?

A Yes.

Q In determining that you believe Mr. Lipsky in some of the things he said did you take into account or did you have an assumption with respect to whether or not Mr. Lipsky said those things because he knew that the defense could prove them otherwise?

A Yes.

MR. EDWARDS: Objection.

THE COURT: I will allow it.

Q What was your assumption?

A My assumption was that Lipsky knew that the defense had certain papers at hand and if he said something else it could be a lie.

Q Was that assumption based upon his behavior in the courtroom?

A Yes.

Q When you said that you believed Mr. Lipsky used drugs, did you take into account that he told the doctors in Nassau County in December, 1972, that he used cocaine since 1967?

A Yes.

MR. EDWARDS: Objection, your Honor.

THE COURT: I think that is all right. But in that connection, Dr. Abrahamsen, as I understand it, Mr. Lipsky had been in jail for the last couple of years and presumably has not taken any drugs in the last couple of years. Does that make any difference?

THE WITNESS: I think he has been taking a great deal of Dalmane and Valium, and I think that is the reason he was given 60 tablets of Valium, in order to counteract his drug addiction to cocaine.

THE COURT: A day?

THE WITNESS: This is what happened in this particular place is that Mr. Lipsky, I would assume, needed more tablets because he was nervous and tense and was sleepless and had various symptoms and that the doctor then wrote out -- it is written here -- Dalmane, 30 milligrams, 60 tablets, and Valium, 1 tablet three times daily, 90 tablets. That is quite a dose.

Q Did you consider it significant that there were a number of instances in the record in which Mr. Lipsky blamed other people for his own failings?

A Yes.

Q Did you detect a pattern in this regard?

A Yes, a pattern of behavior.

THE COURT: Where did you get this?

THE WITNESS: In the letters he blamed the prosecutors that they had not done this or that for him, and he also blamed or he wrote letters to his lawyer complaining about the conditions, and, I believe, his sister.

THE COURT: These sound like complaints, not blaming other people for his own failures.

Q Did you consider that he deliberately lied in this courthouse on two prior trials?

A Yes.

Q Do you recall him writing a letter, admitting that he wrote a letter to Mr. Morvillo, Chief of the Criminal Division, about those trials?

A Yes.

Q Do you recall that he claimed that it was the prosecutor's fault?

A Yes, that is what I was referring to.

Q Did you take into account and consider significant, Doctor, that Mr. Lipsky banged his head against a wall in a temper tantrum out in Nassau County?

A Yes.

Q Was it significant to you, Doctor, that he on Tuesday of last week banged his hand against a wall while he was in the witness room?

A Yes.

Q Did you notice any expressions on Mr. Lipsky's face as he testified that you regarded as significant?

A Pardon me?

Q Did you notice any expressions on Mr. Lipsky's face as he testified in the courtroom when he was cross-examined that you regarded as significant?

A Well, I don't know how significant it was, but he certainly got very irritable. I don't think that was so terribly significant.

mmh10 Abrahamsen-redirect

Q With respect to Mr. Lipsky's interest in horror films did you regard it as an indication of mental abnormality that Mr. Lipsky made faces at other people while he was watching these horror films on numerous occasions?

A It was possibly some sort of an identification, but with regard to the horror movies I would not have paid much attention to it if it had not been for the fact of the medical record reporting about his having nightmares, etc., etc.

b3

Q Do you regard it as unusual for a person to check the weekly TV schedule on a regular basis to find out what horror films are playing?

A I think that was somewhat unusual. I would say it certainly showed a definite interest in these horror movies.

Q Would it be fair to say that Mr. Lipsky has indicated a preoccupation with violence?

A Yes.

Q Is that corroborated by the claw that Mr. Edwards showed you?

A Yes.

Q Is that corroborated by his using the name of M.T. Graves?

A Yes.

THE COURT: I thought the evidence was that somebody

stuck with him the name M.T. Graves, not that he initiated it.

MR. DUKE: Yes, your Honor, he writes letters and makes phone calls in that name.

THE COURT: I am curious about this preoccupation with -- what did you say, Mr. Duke?

MR. DUKE: Violence.

THE COURT: Is this an abnormal trait, preoccupation with violence?

THE WITNESS: Yes, I think it is, yes, and this is the reason why I always said from the start that you really have to look at this man or any person on the whole, his whole behavior pattern, because then you will get a picture of how this man thinks and how his mind works.

THE COURT: A couple of years ago somebody jumped in front of a subway train and was badly mangled. There were a couple of hundred people there. Every one of them rushed up to see the mangled man. Is that not a preoccupation with violence?

THE WITNESS: I'm sorry to say, your Honor, that some people are fascinated with violence, to see the mangled body, but I don't know whether one can say that is a preoccupation. It would depend upon what else they were preoccupied with in their minds.

THE COURT: Mr. Duke, I don't know about the rest

of us, but I am hungry.

MR. DUKE: I am,too.

THE COURT:I told the jury to get back at 2. I hate to keep them waiting. We should try to be on time. Why don't break at this point and try to get back as soon as we can to 2 o'clock.

(Luncheon recess)

1/29/75
PM 1

AFTERNOON SESSION

2:15 p.m.

(In open court; jury not present)

D A V I D A B R A H A M S E N, resumed.

REDIRECT EXAMINATION

BY MR. DUKE:

Q Doctor, do you have Mr. Lipsky's testimony?

A Yes.

Q Will you look at Page 452, please?

A 452? Yes.

Q Doctor, looking at Line 19 --

A Pardon me --

Q Line 17, excuse me.

A On what page?

Q Page 452.

A Yes?

Q Beginning with question:

"Q Does it mean anything to you, Mr. Lipsky" -- down through Line 22 on that page.

Does that question and that answer --

A Pardon me. What did you ask?

Q Read to yourself the question and answer -- well, the question is:

"Q What does it mean" -- referring to the oath.

"A It means you sit here and swear to tell the truth to the best of your ability and the best of your knowledge and the best of your memory."

Does that question and that answer have significance to you in evaluating the mental disorder of Mr. Lipsky?

THE COURT: What page is that on?

MR. DUKE: 452.

A He doesn't understand -- the impression I have is that he doesn't understand really what it means to tell the truth.

MR. EDWARDS: Might we inquire if the witness has read the next succeeding question and answer on the same page?

Q My question, Doctor --

THE COURT: No, I think we will pursue the question Mr. Edwards has raised.

I take it the question and answer you just looked at, Doctor, on Lines 19 to 22 -- is that right?

MR. DUKE: Yes.

THE COURT: Is that correct?

THE WITNESS: Yes.

THE COURT: Now, Lines 23 and 24.

THE WITNESS: Yes.

MR. EDWARDS: I didn't hear the answer.

THE WITNESS: Yes.

THE COURT: And do you have any comment on that?

THE WITNESS: On the question on Line 23, your Honor?

MR. DUKE: Your Honor, I haven't finished my question on the other.

Q What is the significance to you of the question and answer beginning on Line 19?

A It's the meaning of an oath, what it means to take an oath.

Q And what does that suggest the meaning of the oath is to Mr. Lipsky?

MR. EDWARDS: Objection, your Honor.

THE COURT: No. I will allow it. We don't know what it really means to Mr. Lipsky. All we know is what the Doctor can tell us that he thinks it means to Mr. Lipsky from the answer.

A It means to me, examining this particular point, it meant that he really doesn't understand the meaning of telling the truth.

THE COURT: Where do you see that?

THE WITNESS: To me the answer is quite abstract, in the sense that he says something here, "To tell the

truth to the best of your ability and the best of your knowledge and the best of your memory."

When it comes to telling -- to telling the truth, I think it should be more than that, trying to tell really what happened in accordance with the facts.

Q You interpret that statement, the question and answer beginning on Page 19, as having nothing to do with the obligation, but relating merely to the formalities of raising your hand and reciting a series of words?

A To me it means that it refers only to the mechanism of raising his hand and swearing.

Q Is that consistent with the psychopathic personality?

A Yes.

THE COURT: Dr. Abrahamsen, you are going to have to enlighten me. What do you get out of that answer that begins on Line 20. Is that all it means to Mr. Lipsky is a mechanism where you sit there and raise your right hand and it doesn't make any difference?

THE WITNESS: No, I would not say that, sir. What I would say is that he was -- he was trying to tell the truth, but really there isn't -- I would say that if any person is asked about telling the truth, I would have liked him to say something to the effect -- not say

5 mpmch Abrahamsen-redirect

something to the effect, but I think he should have brought out telling the truth in accordance with the fact and the meaning, the meaning of the oath, and this is the reason why I felt it was that his relating this matter particularly was a little strange.

THE COURT: So it's the answer you don't like. You don't think his answer -- It's not the contents of the answer. You think he should have said something different than he said?

THE WITNESS: Yes.

THE COURT: And you said he should have said something that you think he should have said; is that right?

THE WITNESS: Yes.

Q Doctor --

THE COURT: Now, excuse me.

Obviously, he didn't say what you think he should have said, but where do you find in the words that he did use anything to support the notion that he didn't believe that he was under oath, that he didn't believe that he was obligated, being under oath, to tell the truth? I am puzzled.

What is there about the words he used that you find unsatisfactory?

THE WITNESS: The wording here, "It means you sit here and swear to tell the truth to the best of your ability and to the best of your knowledge."

The first words, "It means that you sit here and swear to tell the truth."

I think that the wording -- well, I don't know -- I should say it's strange, but really when a person is asked what it means to give the oath, of telling -- of telling the truth, it should have been something more than what he has said here, I think.

mmh 1 Abrahamsen-redirect

T2pm

Q There is nothing in this answer, is there, Doctor, about any obligation, any sense of obligation?

A No obligation.

THE COURT: How about the next question and answer. Do you see any obligation or sense of obligation in the next question and answer, which reads, "Did it mean that you also must tell the truth?" I am asking you about the next question and answer.

THE WITNESS: Yes?

THE COURT: Do you see in this question and answer any sense of obligation?

THE WITNESS: But if I may add here, please, your Honor, when he says you must tell the truth, I believe this is a quite impersonal way of saying it, that he should have said, "I will tell the truth," or something like that, to that effect.

THE COURT: The question was, "Does it mean that you must tell the truth?" And the question, incidentally, was asked by Mr. Duke, and all the witness said was, "Yes."

Go ahead, Mr. Duke.

Q Doctor, among your definitions of psychopath, your descriptions of psychopath, which I take it describe Mr. Lipsky, as a question of conscience is the psychopath bound by any sense of conscience?

A Conscience?

Q Conscience.

A To a little extent, yes, depending on the degree of his psychopathy.

Q With respect to Mr. Lipsky, do you see any evidence that he does or does not feel any sense of conscience?

A I do believe that his degree of conscience is very small, indeed.

Q How about Mr. Lipsky's concern for formality. Do you have any conclusion based upon what you have examined and what you observed that Mr. Lipsky has a sense of morality?

A Since his conduct or behavior is always dictated by what can be of advantage to him, I do not believe that he has any morality.

Q Is there anything in his testimony which would specifically support that?

b2 A Yes, it is on page 393.

Q Do you have that before you?

A Yes.

Q What is that statement?

A He is asked morally as well as mentally, and he answers, "I don't know what you mean by 'morally.'"

Q What is the significance of that in your diagnosis,

Doctor?

A That Mr. Lipsky had very little understanding of what morally meant.

Q Had what?

A Had very little understanding of what morally meant.

Q Is that an indication of abnormality?

A Yes.

Q With reference, Doctor, to Mr. Lipsky's letter to his sister -- I believe you have it -- in that letter, which is Exhibit I Mr. Lipsky says, "You wanted to play truth with me. It's a game I play better than you."

Does this have any significance in terms of evaluating Mr. Lipsky's pathology?

A Yes.

Q What is the significance of that?

A It means really, I believe, that he was playing a game with truth. That is the implication I get.

Q Is that consistent with all the testimony you have heard and you have read?

A Yes.

Q Doctor, in your opinion is Mr. Lipsky in need of treatment?

A Yes.

Q Is he mentally diseased?

A Yes, he is mentally abnormal. He is quite a disturbed man.

Q Would you say that he has a character disorder?

A Yes.

Q What is the character disorder that he has?

A A character disorder is a disturbance of his character whereby he is unable to tell the truth; he is unable to be guided by what we call social or moral values; in other words, a neurological character which we called before and still call a psychopathic personality.

Q Doctor, in the psychiatric profession I take it that there are some academic differences as to what label should be attached to the personality disorder or the character disorder that you describe?

A Yes.

Q What is the nature of that disagreement?

A The nature of this disagreement is that the psychopathic personality has always, at least until recently, been a difficult question for psychiatrists to agree upon. It's only lately, in the last 30 years, that we finally have agreed upon more or less I would say that a psychopathic personality really is a person who shows a disturbance of his character, a character disorder, and this is what we prefer to call them, instead of calling them a psychopath.

Q Is a psychopathic personality also referred to as a sociopath?

A Yes.

Q The latter term, sociopath describes the same character disorder?

A Yes. Now, the term character disorder has been used and not used, but I believe that in present day what psychiatrists today speak about, particularly those who are psychoanalytic or even yesterday instead of talking about a psychopath they would rather talk about character disorder.

Q Doctor, I believe you were asked on cross-examination if you felt that you as a psychiatrist having observed Mr. Lipsky and having studied the transcripts and having studied the exhibits that are in evidence have any advantage over 12 ordinary people --

A Have any advantage --

Q Excuse me. I'm not finished -- in assessing Mr. Lipsky's credibility. Do you think that you have something to contribute to 12 ordinary people in determining Mr. Lipsky's credibility?

A Oh, yes, indeed.

Q What is that?

A Firstly, I pointed out the behavior pattern this

man has shown for a long time that a lay person cannot do.

THE COURT: You say the first thing you can point out to them is the behavior pattern? What does that mean? You say they can't do it themselves? They have observed what you have observed; they have read or have available to them the documents that you have.

Q Doctor, I point out that the jury --

MR. DUKE: At least I don't think the jury will have a copy of the transcript available to study.

THE COURT: They will have it available to study, Mr. Duke.

MR. DUKE: They will, your Honor?

THE COURT: Of course, if they want it. I don't know whether they will ask for it.

Q What is it that you have to assist the jurors in their determination?

A I can point out to the jurors that this is a man who is exceedingly selfish, whose whole life has been going around trying to be of self-service, whatever he did was only to serve his own interests, being highly egocentric and highly narcissistic. I can only point out his hostile, aggressive behavior as he has shown in not only with regard to his dreams, but also his violent behavior, with regard to crushing the scales, shooting the TV set. Now, these are

only a few events we do know about, but it is my experience that when a person has done these things, even if it is only two or three things, we can rest assured that he has done many such things and similar things, which means to me that this man is or becomes violent when he is frustrated, he b3 becomes violent and angry.

Q How is this violence related to his credibility? What is the relationship between his violence, aggressive instincts and his propensity to tell the truth?

A He feels somehow he has gotten a raw deal and he somehow has taken this out against his family or against other people, and this being the case, as he says himself, "I am vindictive." That means that he is trying to hurt whenever he can hurt and whenever it serves his own interests. During these acts he may commit violent acts. Whether or not this violence has any bearing upon credibility cannot be stated for sure.

Q Would his vindictiveness and his lack of concern for --

MR. EDWARDS: I would appreciate if we can have the last question and answer read, because I think I may have missed something there.

(Question and answer read.)

Q Doctor, do you believe based upon your analysis that

his violence propensities can manifest themselves in lying?

A Yes, because he is trying to give himself explanations.

Q Would you elaborate on that?

A In a way, he is trying to rationalize his behavior that he had to do this in order to do this.

Q I believe on cross-examination you were asked if you had any idea of why Mr. Lipsky, what Mr. Lipsky's self-interest might be as he sat there on the stand.

A I'm sorry. I didn't hear you.

Q You were asked, I believe, on cross-examination if you had any idea what Mr. Lipsky's self-interest might be or what his perception --

MR. EDWARDS: That is not what I asked him.

MR. DUKE: Withdrawn.

Q I believe you were asked if you had any idea what Mr. Lipsky's self-interest might be as he sat there as a witness on the stand.

MR. EDWARDS: I think what I said was at any particulat time.

MR. DUKE: At any particular time includes when he sat there on the stand testifying.

MR. EDWARDS: The question was, did he have any means of knowing what Mr. Lipsky's self-interest was at any

particular time, and the answer was no.

Q Doctor, don't you know from the evidence that Mr. Lipsky is under a zero-to-20-year sentence for manslaughter?

MR. EDWARDS: Objection, your Honor.

THE COURT: I will allow it.

Q Do you know that, Doctor?

A Yes.

Q And do you know that he is expecting the federal authorities to communicate with the Parole Board, the New York State Parole Board with respect to his parole?

THE COURT: I think obviously he doesn't know whether any communications in this respect may be made. It is equally obvious that he may make assumptions, but his assumptions in this respect seem to me are obviously based upon no solid information. I would think, Mr. Duke, that the possible 20-year sentence does not as far as you are concerned show a possible self-interest.

Q Doctor, do you have any opinion as to how Mr. Lipsky perceived his self-interest, he, Lipsky, as he sat on the stand last week?

A His self-interest is only what kind of an advantage can he have, can it be for him in whatever he says.

Q What advantage does he see in testifying falsely?

MR. EDWARDS: Your Honor, --

THE WITNESS: What was the question, please?

Q What advantage does Mr. Lipsky see in your opinion in testifying falsely in this proceeding?

A It furthers his own self-interest.

Q How does it further his self-interest?

A He himself may be able to get out of a difficult situation.

Q What difficult situation is he in?

A Well, as you mentioned, he is in for zero-to-20 years' imprisonment.

MR. DUKE: Thank you, I have no further questions.

MR. EDWARDS: I just want to nail down one thing, your Honor.

RECROSS EXAMINATION

BY MR. EDWARDS:

Q In the past you have testified on the issue of competency to stand trial? Is that correct?

A Yes.

Q And you have testified on the issue of legal insanity at the time a crime is committed?

A Yes.

Q You have never been permitted to testify, have you, in any federal criminal trial on the issue of the credibility of a witness called by the prosecution?

A On the credibility? I would be inclined to say no, but I am not quite sure.

Q On what issue do you think you're testifying here now? What do you think the issue is that you have been called upon to testify here?

A The issue is whether this man is very sick, to such an extent that his credibility must be questioned.

Q Have you ever testified on such a subject before?

A Pardon me?

Q Have you ever testified on the subject before in any federal criminal case?

A On credibility? Not credibility alone.

Q Let me ask you just one more short line of questions.

You have testified that as a psychiatrist you can contribute something to the jury's consideration of the problem? Is that correct?

A To the understanding of the person, yes.

Q Now, let's assume that there are no trial lawyers on the jury.

A Pardon me?

Q Let's assume that the 12 jurors contain no trial lawyers and let us assume we had a trial lawyer around here who had tried a hundred cases and he cross-examined a whole lot of people of various kinds and he has had years of

experience along those lines, could he contribute something to the jury's understanding of the case if you added him to the jury?

A I don't know. I cannot answer such a hypothetical question.

Q Suppose you had a newspaper reporter and let's assume there were none of them who were members of the jury, and if we called him in here and he was a newspaper reporter who had covered hundreds and thousands of crimes and he had interviewed thousands of people concerning crimes and related things, do you think that he would have various insights and understanding that might be of help to the 12 other people?

A He would possibly have some, but not certainly to the degree that a psychiatrist would.

Q Isn't it a fact that any sane person whose attitude [illegible] is that 12 people on the jury would probably come to the case with some added insights?

A In general, yes.

MR. EDWARDS: No further questions.

Q Were you hired by the United States Government to testify in the Trapnell case?

A Yes.

Q Where was that case?

A That was in the Eastern District, yes. Now wait a minute -- yes, the Eastern District.

Q When was that?

A This was in 1972, 1973.

Q What was the nature of the charges?

A The nature of the charge was that he claimed to be insane at the time he had hijacked the plane.

Q This is the defendant?

A The defendant, yes.

Q And --

A And I was called to ascertain whether the man was -- whether or not the man had told the truth or not about himself.

Q You were called in by the United States Government?

A Yes.

Q And you did a number of psychiatric tests for the defense?

A Yes.

Q That the man was insane?

A Yes.

Q And did you testify for the Government?

A Yes.

Q And what was your conclusion?

A That the man was lying, that he was malingering.

Q And what was the verdict?

A The verdict was that he was found guilty.

MR. DUKE: Thank you.

THE COURT: Dr. Abrahamsen, one point -- I want to make this clear, so if it affects anything you said you can correct your testimony.

I commented on the availability of the transcript to the jury. Normally we don't let the jury take any transcript of the testimony into the room room because the transcript, of course, almost always contains colloquy between counsel and the Court, which the jury may not see, so the usual procedure is to read to the jury -- to have the court reporter read to the jury portions of the testimony or all of it, which they are interested in.

As far as I know, there's no reason why we can't let the jury take the transcript of the testimony into the jury room except the practical problem that this would require excising all of the objections and the colloquy and the other portions which they should not

see.

Does that affect in any way your testimony?

THE WITNESS: No.

THE COURT: The other thing I would like to ask you about: Did you become aware in the course of your work on this matter of any information about Mr. Lipsky's childhood?

THE WITNESS: Only what I have from the medical report and from the investigative report.

THE COURT: Did you get something about his childhood?

THE WITNESS: Yes.

THE COURT: And has that been a factor in your conclusions about Mr. Lipsky?

THE WITNESS: To some extent, yes.

THE COURT: I believe I'm correct in my understanding that that information is not in evidence.

All right, Doctor --

THE WITNESS: Then I can't mention it.

THE COURT: Of course, you don't know whether it's in evidence or not.

All right,Doctor. Thank you very much. We will take about five minutes.

(Recess)

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(In open court; jury not present)

MR. EDWARDS: Your Honor, may I be heard on the ruling?

THE COURT: Yes. Is Mr. Duke ready?

MR. EDWARDS: I am sorry.

Your Honor, I say this in all total sincerity: That it seems to me this testimony should be kept out, not because it's apt to in any way injure the prosecution's case. However, it ought to be kept out,nonetheless, because it's a disservice to the cause of justice and the proper trial of the case to put in front of the jury this testimony which, it seems to me on the psychiatrist's own testimony, is nothing more than an invasion of their province.

It is, of course, a matter for the Court's discretion. It seems to me the one thing we have shown is that the whole thrust of saying Lipsky is a psychopath is to say that anyone evaluating his testimony should evaluate it with considerable caution. The pyschiatrist has conceded himself that any twelve normal people would have no trouble whatever recognizing that from the same factors that the psychiatrist relies on.

The science of psychiatry can contribute many, many things in many, many situations, and when I say this

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I certainly am not impugning the professional man who has testified here. That's not the point.

I am simply saying that, as a legal matter and as a matter of trial administration, there is no showing whatever that this testimony needs to be received as an aid to the jury. It seems to me that the countervailing dangers -- and they are certainly not only dangers to the prosecution -- that the countervailing dangers shouldn't be permitted to occur, and that this is nothing, in effect, but a waste of time if it's permitted to occur, and not simply a waste of time, it could prove to be considerably worse than that.

It seems to us that the fact that Lipsky --

THE COURT: You started out by saying it wouldn't hurt the prosecution.

MR. EDWARDS: I don't think it would, your HOnor, but, of course, one can never tell when you allow in fundamentally irrelevant and confusing information, you never know whether one or two jurors might be affected by it and, of course, then it could interfere with the cause of justice in a very serious way.

Furthermore, your Honor, it seems to me it's a serious interference with the cause of justice when you draw the jury's focus away from the substantive evidence

on the facts of the case and involve them in hours and hours of hearing a psychiatrist cross-examined as to really -- I think I can almost say as to what? As to the fact that he thinks Lipsky's testimony should be viewed with suspicion, which is something that every sane person knows anyway.

I submit the testimony shouldn't be permitted and that the record that has been made is as clear a record as could possibly be made on the lack of utility and dangers of permitting such totally superfluous testimony.

THE COURT: You say "hours and hours." Of course, that is something that I have under control in some sense.

MR. EDWARDS: Your Honor, I know that.

On the other hand, I think it's fair to say that, just as an example, your Honor, in my cross-examination this morning, insofar as I could determine it from the materials I had here, I had not covered more than perhaps ten percent of the relevant cross-examination that I had prepared. I would very seriously urge your Honor that the aim of a fair trial here indicates at the present time that this testimony not be received and that the jury really be kept focused, as I think they have been focused

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so far, on the relevant facts and circumstances of this case rather than in passing judgment on whether the psychiatrist is a man who under the circumstances has valuable opinions or not.

I think the jury will inevitably become involved in passing judgment upon whether the psychiatrist's reasons, which he's been questioned on by all parties here, make any sense or not, and inevitably, I suppose in summation we would then have to address our attention to whether his testimony and the basis for it which he has set forth makes any sense whatsoever.

I don't think that in view of the either non-existent or virtually nonexistent probative value of what he has to say, that the trial should be fundamentally disrupted in a way that I think would occur here, and I submit that the record is now -- I will concede that prior to his testimony here this morning, I can well understand that there was a question here that had to be resolved, but I really submit at the present time the record has made the reality of this situation entirely clear, that all we have is an offer of a thirteenth juror, and then one of the issues in the case has become whether this thirteenth juror is approaching the problems of this case in a sensible manner or not, and that is a very

distracting thing, and, as I say, what he has to offer here is just totally superfluous.

Lipsky has admitted he is a murderer, a confidence man, he worked in narcotics, he forges his mother's checks, and there is not a single grown person in this country who doesn't, through that alone, have adequate basis for judging him, and indeed the psychiatrist I think fundamentally has conceded himself that all these other things letters with the name "Wart" and watching horror programs are really a significant part of the picture. He is relying on the ame thing that are a hundred percent crystal clear to the jury, and I really can't overemphasize how strongly we press this contention.

We very respectfully submit that this is simply not the right way for this trial to proceed.

THE COURT: All right, Mr. Duke.

MR. DUKE: Your Honor, I will try not to repeat anything I said in either our memorandum or our robing room conference on this matter.

It seems to me the evidence makes clear that the psychiatrist can supply to a jury evidence interpreting Mr. Lipsky's psychological addiction to drugs which is established not only by his own admissions, not only by the psychiatric work of December 1972, but by the prison

and jail records which show the presciptions for drugs, the psychiatric and psychological significance of that can surely not be understood by the jury. The jury told the Court at the outset of this case, as I recall, that they had no experience with drugs or cocaine, no friends of the family used cocaine. We have a witness here who is deeply involved with cocaine as a user, and the only way to get that significance across to the jury is through an expert.

I also submit that the pattern of Mr. Lipsky's pathological behavior can -- that the doctor can --

MR. EDWARDS: Pardon me, your Honor, but I really don't think -- I was not aware of this until I had looked behind me. I don't think the psychiatrist should be sitting in this courtroom while this argument is in progress.

THE COURT: Do you have any objection?

MR. DUKE: I would agree with that, your Honor.

THE COURT: All right.

Doctor, will you excuse yourself?

(Pause)

MR. DUKE: The doctor testified, if I understood him correctly, that the entire pattern of Mr. Lipsky's behavior -- and I submit to the Court that the documents

in evidence show that that -- that the doctor had before him substantial evidence concerning the life history of Mr. Lipsky, his sibling relationships, the fact that his father died when he was one, his stepfather died subsequently, his relationship with his mother, his relationship with his stepfather, his lack of memory of his father, his success and non-success in school, his success and non-success in business -- all of these facts are in the presentence report that was submitted in Nassau County and the doctor has examined.

This information is not available to the jury. And what the doctor says is that Lipsky -- if I understand it correctly, Lipsky's entire life --

THE COURT: As you know, that probation report would not be available to the jury.

MR. DUKE: Well, your Honor, it's in evidence.

MR. EDWARDS: Your Honor, I said I didn't oppose receiving the Nassau County probation report in evidence and there is some very skimpy reference to Lipsky's childhood and it's in evidence for that purpose.

However, I would call the Court's attention that none of these crazy letters or incidents that the doctor is relying upon occurred, as far as I can remember, prior to the age of around twenty-six.

MR. DUKE: The psychiatrist can be useful in fitting Lipsky's life patterns into a coherent, sensible whole, and that coherent, sensible whole that he fits him into is the classic psychopath, and I submit that we have no reason to think or to suspect -- and I am sure Mr. Edwards would agree -- that any of the jurors have any first-hand experience with a psychopath.

MR. EDWARDS: I would assume they do, if there is such a thing. The psychiatrist says there are thousands of them around.

MR. DUKE: There are, indeed.

THE COURT: Well, I don't know we need to argue whether the jurors know anything about psychopaths labeled as such.

MR. DUKE: I think the Court could almost take judicial notice that the character who testified on the stand last week is a very unusual, abnormal individual, and the medical significance of that, the psychiatric significance, the way in which Mr. Lipsky's behavior establishes and proves a disposition on his part to do things in the future, and, more specifically, to lie on the stand, I think the psychiatrist has something very significant to offer.

THE COURT: Well, I suppose I can take judicial notice. I suppose the jury can, also. Why can't the jur take judicial notice of it?

MR. DUKE: They can, indeed, your Honor. I think the jury would have no difficulty in determining that this was an unusual character and I would agree with Mr. Edwards that they would, hopefully at least, look upon his testimony with some doubt, but the ultimate thrust of the psychiatric testimony is that this witness, Mr. Lipsky, should only be -- that what he says under oath should be given no weight whatsoever because of his patholgical condition, unless the jury determines that it was in Mr. Lipsky's interest to say what he said, and thus the thrust of the psychiatrist testimon, is to shift the focus from reliance upon the oath and demeanor of the witness, which a jury presumably do rely upon, to a reliance upon or to a focus upon what is Mr. Lipsky's interest in this case, and I submit that is the preeminent consideration that this psychiatrist can make: To alert the jury to the fact that the oath is meaningless to this man, that what is meaningful to this man is his interest as he perceives it, and certainly the jury is as competent as are psychiatrists to determine what Mr. Lipsky's interests are, but they aren't competent

without psychiatric help to determine the significance in assessing the credibility of his interests.

For that reason, as well as all the other reasons, I submit this testimony is admissible.

MR. EDWARDS: Your Honor, I just want to close with one observation: We have seen many, many examples today of how this psychiatrist proceeds in attaching significance to various matters such as, for example, that testimony that was read to him right after lunch. I would submit that all who have --

THE COURT: What testimony?

MR. EDWARDS: Your Honor, the four lines on it on Page 452.

THE COURT: About the taking of the oath?

MR. EDWARDS: Yes, your Honor, and I think you asked him some questions and so forth.

THE COURT: All right.

MR. EDWARDS: I would submit, and I would think, together with all other persons who have faith in American jurors, that they can be relied upon to evaluate this case considerably better than the psychiatrist could, and he has nothing to contribute whatsoever other than to tell them a couple of exceedingly simple things which they and everyone else already know.

THE COURT: All right.

I have, as you know, worried about this question for several days. We have talked about it in the robing room and spent a lot of time, all of us, considering it. It is, I think, a very difficult question.

With respect to the law, I have spent a lot of time on considering what the law is. There are three or four cases in my mind which I think are significant. The Hiss Case, the Parton case in the Fifth Circuit, the Bonner case in the Ninth Circuit, the Williams case in the Court of Appeals in New York State.

I think the -- turning away from the law, the voir dire examination which we had this morning and early this afternoon was very helpful.

My conclusion is that the testimony will be of no use to the jury, will not be helpful to the jury, and I will not receive it.

All right, Mr. Duke, whom do you have next?

MR. DUKE: Your Honor, might we have a couple of minutes?

THE COURT: All right. We will have five minutes or so.

cmsr 1

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

- against - : 73 Cr. 105

VINCENT PACELLI, :

Defendant. :

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B e f o r e :

HON. CHARLES E. STEWART, JR.,

District Judge.

New York, N. Y.
February 28, 1975 - 9:30 a.m.

A p p e a r a n c e s :

PAUL J. CURRAN, ESQ.,
United States Attorney for the
Southern District of New York,
By: THOMAS EDWARDS, ESQ.,
Assistant United States Attorney.
- and -
JAMES E. NESLAND, ESQ.,
Assistant United States Attorney.

STEVEN P. DUKE, ESQ.,
Attorney for Defendant.

[In open court.]

THE CLERK: May I call the matter, your Honor?

THE COURT: Where is Mr. Duke?

THE CLERK: Mr. Duke was here when you came in, Judge.

MR. EDWARDS: He is here, your Honor.

THE CLERK: May I call the matter, your Honor?

THE COURT: Yes.

THE CLERK: For sentencing, Vincent Pacelli. Is the Government ready to proceed?

MR. EDWARDS: We are ready, your Honor.

THE CLERK: Is the defendant ready to proceed?

MR. DUKE: Ready, your Honor.

THE CLERK: Thank you.

THE COURT: Good morning, gentlemen.

MR. EDWARDS: Good morning, your Honor.

MR. DUKE: Good morning, your Honor.

THE COURT: I have received from Mr. Duke his motion papers for a new trial, and I have just received from the Government their memorandum in opposition to that motion. Have you gotten that, Mr. Duke?

MR. DUKE: Yes, I have, your Honor.

THE COURT: As I understand, Mr. Duke, there are three points which you were presenting in your offers of

proof which are the subject of your motion, that Lipsky was willing to make false accusations against the defendant, that he had gross personal hostility towards the defendant, and that he was extremely partisan towards the Government willing, in effect, to say anything.

MR. DUKE: Your Honor, may I be heard briefly on that point?

THE COURT: Yes, go ahead.

MR. DUKE: First of all, your Honor, Mr. Nesland has brought to my attention that I put the wrong number on the motion. It should be 105 --

THE COURT: Yes.

MR. DUKE: The two basic points in my motion, I think first of all with respect to Mr. Lipsky's prior perjurious implication of Mr. Pacelli in a narcotics transaction, it seems to me that the case law makes amply clear that that evidence is admissible, and I would just like to make a few remarks about the prejudicial nature of its exclusion and respond to the point that the Government makes.

In the first place, with respect to the evidence our documents indicate that on three occasions Lipsy -- on two occasions, including one occasion in which Pacelli himself was on trial, Mr. Lipsky testified that Pacelli was in

the Yellow Fingers, Lipsky and Pacelli were in the Yellow Fingers having dinner, Valentine walks in and the three of them have a conversation and Valentine's keys are passed to Lipsky. Lipsky leaves, gets some cocaine, comes back, goes back into Yellow Fingers, Valentine and Pacelli are still there, he gives the keys to Pacelli, Lipsky does, and Pacelli gives them to Valentine, and then Valentine leaves.

Lipsky so testified in the trial in which Mr. Pacelli was charged with that narcotics offense. He also gave this testimony in the trial against Mr. Valentine.

Detective Nunziata, on the other hand, testified in the Valentine case and in the Pacelli case -- and the Gonzales case, both, he testified unequivicolly in the Valentine case the excerpt of which I have submitted to the Court, that he was tailing Valentine, Valentine went into the Yellow Fingers, had a meeting with an unknown male, passed something to that unknown male, the unknown male left, and there is no question that at that point that the unknown male was Lipsky.

That testimony -- and he followed, then followed Lipsky to his apartment, saw him return, saw him go in, back into the Yellow Fingers.

Mr. Pacelli was not seen by Mr. Nunziata and, incidentally, another detective D'Ambrosio, was engaged in

the surveillance, and he didn't see Mr. Pacelli, either, although I didn't suggest I could offer that testimony to refute Lipsky because D'Ambrosio doesn't clearly indicate that he was in a position to see what went on in the Yellow Fingers.

But Nunziata testified that he actually observed what went on in the Yellow Fingers Restaurant, and Lipsky admitted in the Mallah case that you could see what went on.

Nunziata said he saw what went on and saw a meeting between two men which clearly contradicts Lipsky.

Now, the relevance of it is not merely that it shows that Lipsky committed perjury on another occasion. I suppose given Lipsky's acknowledgment that he committed perjury on three other occasions, or deliberately lied, one might argue that supports the instance of perjury. But the significance of this, your Honor, is that this wasn't perjury about deals that had been made or promises. This was perjury about Vincent Pacelli.

This was proof that Barry Lipsky attempted to frame Vincent Pacelli, and we had no evidence, we had no eyewitnesses, disinterested or otherwise, concerning the Parks murder to put on the witness stand. The only disinterested witness that we had that could prove that Lipsky

deliberately framed Pacelli was the testimony of Detective Nunziata which The Government itself offered in these prior cases.

Surely the jury would have been most impressed by the testimony of the disinterested witness, a police officer who had formerly been -- whose testimony had been offered by the Government in a criminal prosecution that gave the lie to Lipsky's sworn statement that Pacelli was involved in the narcotics transaction. Surely that would have been most impressive evidence to the jury, more impressive, more potent than anything we offered. It was the most potent piece of evidence, I submit, that we had in the case and the jury was not permitted to hear it.

The second most potent piece of evidence, I submit, your Honor, was the statement Lipsky made one month before the Parks murder, Bruce Gordon suggesting that Gordon burn two witnesses.

Now, the Government's theory in the case, and Lipsky's pose in this case, was that -- and his testimony in this case -- was that after this chance meeting with Patsy Parks Mr. Pacelli says, we're going to burn her up. The idea comes from Mr. Pacelli. Mr. Lipsky is just along as a lackey, as Mr. Nesland argued to the jury, Lipsky, as Mr. Nesland argued to the jury, Lipsky was Mr. Pacelli's

flunkey, his gopher.

That was the Government's theory in this case. This evidence, we don't know whether Lipsky would have admitted making the statement or not, because we weren't permitted to ask that. This evidence would show that the man that was claiming to be a flunkey, a gopher, an errand boy who just went along to help Pacelli do what Pacelli had schemed to do, was in fact a man who schemed to murder witnesses before he had a meeting with Patsy Parks.

This was a man to whom burning of witnesses was a reasonable, apparently a reasonable method of handling one's problems. And I submit that that is extremely unusual. It is most unusual. I don't think it would occur to the most craven of crooks that the way to handle your legal problems is to burn witnesses, but Lipsky --

THE COURT: Does "burn" --

MR. DUKE: Lipsky -- excuse me, your Honor.

THE COURT: Does "burn" sometimes mean kill or shoot?

MR. DUKE: Sir?

THE COURT: All right.

MR. DUKE: I suppose "burn" could mean a lot of things, but the normal meaning of it, that would have been for Lipsky to explain. He might have been joking --

THE COURT: Yes.

MR. DUKE: But the fact of the matter is he said it and it strongly suggests that Lipsky, prior to this claimed meeting with Pacelli, had a state of mind, a general scheme of disposing of witnesses by burning them. And that would strongly undercut his claim that it was Pacelli's idea, it would strongly undercut his claim that he simply went along as a lackey. It would raise serious doubts about his claim that Mr. Pacelli was even there.

Certainly the claim that all the ideas came from Mr. Pacelli would be seriously discounted. If Mr. Lipsky admitted that he made this remark, or if we proved that he made it by calling Bruce Gordon. In other words, this evidence will strongly discount the Government's whole theory of this case essentially, this whole theory of Lipsky being just a guy who was in over his head, afraid of Pacelli, just going along to do what Pacelli wanted.

This evidence I submit would raise grave doubts about that whole theory. So I submit that not only was the evidence admissible, but that it was grossly prejudicial.

I have a third matter that I would like to bring up, your Honor, that is not in the memorandum, and it arises by reason of what I saw in the pre-sentence report

last night.

The defense claims that Michael Russo lied when he testified and brought in the records to corroborate him that Mr. Pacelli didn't work for him in 1971.

The pre-sentence report suggests that Mr. Pacelli gave an employment history to -- I believe this is Page 7 in the pre-sentence report, employment history of two employments, one up from 1967 to 1969, and the second one was with the employment with Mr. Waffles which Mr. Pacelli told the Probation Officer apparently he worked for Mr. Waffles up until early 1972.

Interestingly enough the pre-sentence report states that the Probation Officer was unable to verify Mr. Pacelli's claim regarding his employment in 1969 because he sent a letter and it was returned, address unknown, or something to that effect. But there is no suggestion that the claim of employment with Mr. Waffles was not verifiable or that it was not verified, and that suggests, that had my request been granted, that is, had the earlier pre-sentence report been made available to your Honor, it seems entirely possible that the earlier pre-sentence report specifically the pre-sentence report that was prepared for Judge Pollack in March of 1973, would indicate that Michael Russo in fact verified Mr. Pacelli's claim.

If the pre-sentence report contains that information it seems to me arguably that is Brady material, or in any event, newly discovered evidence that Michael Russo lied when he took the stand in this case.

THE COURT: Well, the pre-sentence report to which you have just referred, the reference to Page 7, I believe that is the pre-sentence that was prepared for Judge Pollack.

MR. DUKE: I don't believe it was, your Honor.

THE COURT: No, I see at the bottom, sentencing under Charles A. Tenney. Yes.

MR. DUKE: Now, there is another reason why as I indicated in my letter to Mr. Best, there is another reason why I think your Honor should have access to that.

THE COURT: I think, however, it is safe to assume that the pre-sentence report for Judge Tenney, the person who prepared it had available all the prior pre-sentence reports. Go ahead, Mr. Duke.

MR. DUKE: Well, my point is, your Honor, that that, what your Honor has, and what Judge Tenney has, appears to be a distillation, or a summary of other information. All I am suggesting is that the other documents that were tendered to Judge Pollack may have more detail regarding the verification of employment.

In any event, Mr. Best may have some records;

I presume he does have some records, or in any event possibly some recollection about verification.

Therefore it seems to me that what I am suggesting is that perhaps it would be appropriate to adjourn this proceeding for a week or so --

THE COURT: No, I don't think we need to do that, Mr. Duke. It doesn't seem to me -- in any event, the point is of no substantial significance.

MR. DUKE: Well, your Honor, if your Honor recalls the principal thrust of the Government's theory for offering Mr. Pacelli's prior testimony was to show that Mr. Pacelli lied when he testified that he worked for Michael Russo during the entire year 1971, and that was the theory of calling Mr. Russo.

Well, our contention is that Mr. Russo lied and Mr. Pacelli told the truth. It seems to me that was rather crucial evidence for the prosecution. And any evidence that was in the Government's possession or knowledge, any prior inconsistent statement made by Mr. Russo would surely be Brady material.

I have nothing further on the motion, your Honor.

THE COURT: All right. Mr. Edwards?

MR. EDWARDS: Your Honor, Mr. Nesland will respond.

MR. NESLAND: I think very briefly, since the

Government covered the issues which Mr. Duke has raised on behalf of Mr. Pacelli, we would point out that the testimony that he attached to the moving papers of Detective Nunziata, which he had covered at trial, or would have offered at trial, I think your Honor, if you review that, you see that that testimony was in a case involving Valentine and not Vincent Pacelli. It is testimony given the time that Detective Nunziato did not even know Mr. Lipsky, let alone anybody else who might have been in Yellow Fingers.

His focus was only upon Valentine, and the unknown male who happened to be the one to go out to 1420 Third Avenue, make a pickup there and come back.

So that as the Government pointed out in its memorandum, that testimony does not support in any way that there were not other unknown males present in Yellow Fingers. I think that record was established before The Court. For that reason that testimony, as your Honor found, was very, very remote, especially in light of the fact that it involved a narcotics transaction, in this case which was a civil rights murder case.

I point out, however, that when the Government sought to introduce the testimony of Susan Weil which did involve narcotics dealings between Lipsky and Pacelli, that when the defense counsel objected to the introduction of that

kind of detailed narcotics dealings in this case we affirmatively suggested to defense counsel that he re-offer the Nunziata testimony insofar as it involved narcotics dealings.

He never did so in spite of the fact that his objection was that allowing our testimony through Susan Weil to come in was unfair because the prior testimony of Mr. Nunziata had been excluded. And for that reason we affirmatively suggested that he make a re-offer of that evidence, and he never did.

MR. EDWARDS: Your Honor, might I say -- I am sorry -- we didn't include the page reference on that. However, I have a very clear memory of it because I very consciously challenged him to re-offer that evidence, and Mr. Nesland tells me that he found that colloquy in the record when he reviewed it yesterday and we could provide you with a page reference if necessary. It isn't in our memorandum and we have it on the tip of our tongue --

MR. NESLAND: It's in the colloquy when there is an argument with respect to whether or not to admit or exclude the testimony of Susan Weil.

I think that alone, those points alone foreclose any claim that this was prejudicial error in excluding that testimony by Detective Nunziata.

With respect to the Bruce Gordon statement, I think

it is clear simply by the fact that the Court of Appeals in United States v. Pacelli, which was the appeal of the original conviction, found that that kind of evidence presented a close question of error when it was admitted. And as the Government argued in its memorandum, to exclude such questioning and testimony is obviously not error if the Court of Appeals was of the opinion that it was close to error that it was admittred.

I think that decision by itself forecloses any question of error. But I would point out, as we pointed out in our memorandum, that allowing that testimony, that questioning and then the testimony of Bruce Gordon, which I pointed out in a memorandu, Mr. Duke never represented that he was going to have Mr. Gordon testify, but had he done so certainly he would have sidetracked and mired the case down in a match between Susan Weil and Bruce Gordon with respect to Bruce Gordon's assault on her, and I think that that kind of testimony obviously would have mired the case into collateral matters, and I think The Court was absolutely within its discretion in excluding entirely that line of questioning, as well as the proposed testimony of Mr. Gordon which I again repeat was never the subject of an offer of proof that he was going to call Mr. Gordon.

I believe that answers those two questions, your

Honor. I believe both --

THE COURT: What about the pre-sentence report point? Do you have anything you want to say on that?

MR. NESLAND: Your Honor, the only thing I would point out is that pre-sentence reports, and the Probation Officer's report, are matters of The Court. It is not done for The United States Government or The United States Attorney's Office, it's done for The United States District Court.

They are presented to the United States District Court and it is exclusively within the province of The United States District Court to turn those over or not have them turned over to defense counsel.

I do not know what Judge Pollack did in that case with respect to turning over to defense counsel the pre-setnence report, or just disclosing certain aspects to them. I don't know.

But we would point out that nothing that Mr. Duke has said in any way contradicts Mr. Russo's testimony. And for that reason there is no reason to adjourn now, or for this Court to review that prior pre-sentence report.

Thank you.

THE COURT: All right. It seems to me that certainly, Mr. Duke, the general statements about the

latitude which The Court should give defense counsel in cross-examination are correct, and I, I believe gave you very broad latitude, considerable scope in your cross-examination, particularly with respect to the points which as I understand it you are presently in your motion addressing yourself to, that is Lipsky's hostility, his willingness to perjure himself, his extreme partisanship towards the Government.

Certainly with respect to the last point, for example, there was plenty of evidence which you were able to present going to that point, including, for example, the Lipsky correspondence with The Government and the letter which The Court of Appeals held in the first appeal was reversible, that it was reversible error to not have turned it over as part of the 3500 material.

It seems to me that if perhaps on your two offers of proof you could have supported your offers with competent evidence it might have been a different story, but with respect to Nunziata's testimony -- he is now dead, of course -- he was under instructions, as I read the testimony which you attached to your motion papers, to place Valentine under surveillance.

He says Valentine talked to an unidentified male. We now know apparently Nunziata didn't know at the time that

that was Lipsky.

Valentine, the unidentified male who took the car went to Lipsky's apartment and returned, was the subject of Nunziata's surveillance. Nunziata did not say that there was nobody else in the restaurant.

As far as I know from the record that I have he obviously didn't know who Lipsky was, we don't know that he knew who Pacelli was. So it seems to me that there is nothing that could be added of any significance with respect to that episode.

On the question of whether testimony should have been permitted on the alleged statement by Lipsky about burning witnesses, this would have required going into collateral matters, the calling of other witnesses all of which would have unduly lengthened the trial, in my opinion, and in view of the cross-examination, extensive cross-examination which I permitted, it seems to me it should not have been allowed.

The Hagett case which you rely on heavily in your memorandum, as I read it, it presents an extremely different situation from what we have. There The Court excluded testimony from the defense witnesses who would testify that the Government witness had tried to bribe them into incriminating the defendant through perjury.

It seems to me there is no question but what that was reversible error. So I am going to deny your application.

Now, let us turn to the sentencing. Mr. Duke, Mr. Edwards?

MR. EDWARDS: Yes. Your Honor, on the sentence we have submitted a memorandum, and the first thing I wish to make clear is that we recognize and we feel very strongly about the fact that sentencing of course is the province of The Court, and indeed --

THE COURT: Well, shouldn't I hear from Mr. Duke first?

MR. EDWARDS: Very well, your Honor, yes.

MR. DUKE: Your Honor, the only observation I have to make about The Government's memorandum, The Government suggests that The Court impose a maximum permissible sentence in making it consecutive to the sentence that Mr. Pacelli is already serving. For other reasons I think that is wholly inappropriate, but I suggest that it would be a violation of Pierce against North Carolina were The Court to do that, to impose a sentence that exceeds that which Judge Tenney imposed.

THE COURT: I am sorry, I can't hear you.

MR. DUKE: To impose a sentence which exceeds that which Judge Tenney imposed would be a violation of Pierce

against North Carolina, and that's what the Government is requesting The Court to do, that is, to impose a life sentence consecutive upon the 35 year sentence. That is a greater sentence than a life sentence consecutive on a 20-year sentence which is what Judge Tenney imposed.

So I am just suggesting that The Government is inviting error in making that suggestion. The American Bar Association in their standards on sentencing alternatives suggest that except in the case of a repeated offender, or unusual situation of a defendant who is a gross recidivist in very serious crimes, the maximum sentence that should ever be imposed is 25 years.

Mr. Pacelli stands before The Court already sentenced to 35 years. Now, the sentence that Mr. Pacelli received in these prior two cases were sentences that I submit clearly reflect, both of them, the fact in this proceeding, and that's why I strongly suggested that the pre-sentence reports --

THE COURT: I am sorry, I misunderstood you. I think you said they clearly reflect the fact in this proceeding?

MR. DUKE: Yes. That is when Judge Pollack sentenced Mr. Pacelli in May of 1973 -- '72 he gave him twenty years, again in March of 1974 when he gave him fifteen

years, in both those cases Judge Pollack knew the Lipsky story.

Now Judge Pollack did not make the pre-sentence report available to counsel in the first narcotics conviction, and I submit that it should be a part of this record because I think that pre-sentence report contained Lipsky's story, and Judge Pollack obviously took Lipsky's story about the Parks murder into account in sentencing Mr. Pacelli on two occasions.

So what Mr. Pacelli is in effect being sentenced for today, he is being sentenced for the Parks murder a third time.

Now I am not suggesting that that is per se invalid. I am just suggesting that The Court in determining what the appropriate sentence is, is take into account the highly probable fact that the sentence that Mr. Pacelli is now serving already reflects the aggravation of the Parks murder. If you take into -- first of all, Mr. Pacelli was 29 years old at the time, he had no criminal record.

The facts of this proceeding and the facts of all these other narcotics cases all cover a period of nine months, from May of 1971 to February of 1972.

In all of these cases Mr. Pacelli stood before The Court as a first offender. He stands before this Court

as a first offender.

At the time the Parks murder occurred Mr. Pacelli had never been convicted of a criminal offense of any kind. He was honorably discharged from the Service. He had an absolutely clean record.

Furthermore, there is no evidence in any pre-sentence report that I have seen, or in any evidence that I have heard from Mr. Lipsky or from any other record, that Mr. Pacelli was a long time participant in the narcotics business.

Take everything that Lipsky says as face value. Lipsky's story consists of a story covering a period of nine months, and indeed the narcotics involved were a relatively small amount. It's just crystal clear, your Honor, that the 36-year sentence that Mr. Pacelli already has is a 35-year sentence that twice took into account the killing of Patsy Parks.

I suggest that given the fact that Mr. Pacelli is a first offender, given the fact that he had a clean record, given the fact that there is no evidence of any lengthy participation in any crime of any kind, given the fact that he has already in effect been sentenced for the Parks affair, that the sentence the Court imposes today ought not to exceed that which he has already been given and

it ought to be concurrent with the sentences that he is now serving.

I can't mitigate the facts of the offense. Obviously I can't argue the weakness of the Government's case. I can't assert the defendant's innocence, but I can assert that under general principles of sentence, the sentencing of Mr. Pacelli, the sentence he already serves is itself extreme, and there is no principle of sentencing, no objective that I can think of that would justify or warrant a sentence in excess of 35 years.

Nothing but the most fundamental kind of vindictiveness or revenge would suggest that Mr. Pacelli should receive a sentence that will guarantee that he will die in prison. To take away from him all hope of any redemption or any rehabilitation, all hope of ever seeing the outside of prison service, no objective of any kind.

Certainly deterrence is amply served by the sentence that he has already gotten. He is already going to be an old man when he gets out of prison. He is going to have a long time to think about that nine months of activity, of criminal activity that is involved in this case and the other case.

So I strongly urge The Court that notwithstanding the fact that Judge Tenney imposed a much more severe sen-

tence, I would just point out to The Court that these considerations, these facts were not made known to Judge Tenney.

I don't believe it was even called to Judge Tenney's attention that Mr. Pacelli was in fact a first offender. And therefore I strongly urge The Court to impose a sentence not in excess of 35 years and to make whatever sentence is imposed concurrent with the two prior convictions.

THE COURT: Mr. Pacelli, is there anything you would like to say?

DEFENDANT PACELLI: Yes, your Honor, I would like to say a few things, if I may.

THE COURT: All right.

DEFENDANT PACELLI: Your Honor, I had no reason to kill Patsy Parks, and The Government knows it. I am not a crazy man or a lunatic, either. I didn't kill Patsy Parks or anyone else.

The Government has prosecuted me seven times in three years. They are prosecuting me and using Lipsky against me because I proved to the world that The Government knowingly used perjury against me. In fact, Feffer, Gwynne and Lipsky conspired to use perjury against me.

THE COURT: Who and Lipsky?

DEFENDANT PACELLI: Feffer, Gwinn. You just don't do that to The Government in this country. You don't prove that they are worse crooks than the people they are trying to put in jail. So they are trying to destroy me.

Lipsky framed me on this case, and he was helped by Feffer and other prosecutors. I am not saying that they participated with him, but when this case was made it was made by Feffer, Phillips, Movillo was involved at that time. They were in the office at that time. Movillo was head of the Criminal Division at the time. Phillips was Feffer's boss at that time, and he was the one that made the indictment.

Lipsky frame me on this case. There are two reasons that I say this, that The Government would do this. The Government doesn't care anything about the truth. Where I'm concerned anything goes. Proof of the fact will be that Movillo was head of the Criminal Division at that time--

THE COURT: Who was?

DEFENDANT PACELLI: I think Movillo, I think was the head of the Criminal Division at that time.

THE COURT: Yes.

DEFENDANT PACELLI: I may be mistaken, Mr. Edwards will correct me later. Edwards is the head of the Criminal Division now.

cmsr

In the tapes that exist between Feffer and Gwinn when they had all these conversations Movillo's name is mentioned rather loosely, Feffer makes reference to a chief, that he's amiable to the deal that they are making with Lipsky in reference to his testimony, and you can get the inference that they are talking about his perjured testimony that he is going to do in June 15th, 1972. In the trial involving Valentine when they were talking about this Nunziata testimony and what-not.

Feffer makes reference to the chief. Who is the chief? It shows that there are other prosecutors involved. There's no doubt about that.

Mallo's name is mentioned in the tape as well as Movillo.

Lipsky had The Government under his thumb. He can blow the whistle on The Government. There is no doubt about that. Because he knows who was involved directly and who wasn't involved. Possibly he should be on the fringes of the situation.

Movillo is not in the office now, Mallo is not in the office, Phillips is working in another state, I think, he's the head of the Criminal Division there. Feffer is not working in the Narcotics Department, I think he's working in the stocks and bonds department, I'm not sure.

I just don't understand how they can just keep on using this man. And Movillo, Robert Movillo is, I think, personally involved because I assume, this is my opinion, I might be wrong, it's up to Feffer what he wants to say and what he doesn't want to say in front of the Grievance Committee when the time comes on who the chief really is that he's making mention to.

I can understand, your Honor, I can understand why Mr. Edwards didn't prosecute Mr. Feffer or bring it in front of a Grand Jury for questioning or any type of, you know, little investigatory type of thing, because he's his friend. I mean, you know, they are in the same office, same department. It's not right to prosecute your buddy. It's only human nature. But I'll never understand why Judge Gagliardi, Judge Pollack and Judge Tenney, and now yourself, in protection of clear proof that Feffer soborned perjury, did nothing about it.

I remember reading about it in the newspaper, I may be incorrect, I might be misquoting it, but I remember reading in the newspaper about when the Indians were on trial in the Midwest, I think it was Wounded Knee, if I'm not mistaken, there was misconduct done by the District Attorney, and the Judge himself took it upon himself to write to the, to their boss in the Justice Department, I think, and also

showed to the Judiciary Committee, I might be mistaken about the Judiciary Committee, but I know he wrote a letter to the Attorney General to tell him what's going on with District Attorneys in this office. They would bring in some type of testimony with the background of certain divisions that they had testifying for them. That was in the New York Times. How you can let the Courts of the United States be used that way I still do not know. How can lawyers working for The Department of Justice get away with such crimes? How can the people of this country be protected?

Finally, I don't understand how I can be tried and convicted of a horrible murder and be denied the right to prove that Lipsky and The Government prosecutors conspired against me and denied me my constitutional rights. The reason I feel I should have been given the right is we know Lipsky is nothing but a liar, perjuring, and would do anything to wheel and deal for himself, but why would the Government believe in him? In my opinion the reason The Government believes in him is because there are certain individuals, not the whole Government, in this office in the Southern District that do participate in denying people their constitutional rights, and I am entitled to show to the jury that it was done to me, and maybe that's a

possibility of why they are presenting the case. That happens every day in this world. It happens in business. It happens in anything. The proof of the matter is what happened to Watergate. Everybody is trying to protect one another, then Deane came up and blew the whistle on them.

It's one thing to cover up a crime, your Honor, but to cover it up in a murder trial, I'm facing a life sentence, I think I'm entitled to defend my life, I'm not facing two years, three years where you say, well, it's a minor thing, it's not a big issue. I'm facing a life sentence.

There was a time in my life, your Honor, I was in the service, I have an honorable discharge, I never was arrested before until I was 28 years old, and I believe in justice. You could keep it now. But I imagine somewhere along the line it will eventually come out, because this is the Southern District, this is not all the Courts of the land, and I think you have positive checks and balances and it will come to light. When it comes to light I will prove I'm right.

Thank you.

THE COURT: Thank you, Mr. Pacelli.

Mr. Edwards?

MR. EDWARDS: Your Honor, as I said we not only

recognize, but we feel particularly strongly in our office that the sentencing function is, of course, the province of the judiciary and indeed it is our normal policy never to make recommendations of any kind at the time of sentence unless we are specifically asked, and we depart from this only in very unusual cases. We feel this is such a case.

Mr. Nesland and I have talked the matter over with Mr. Curran at some length, and the recommendations we make are, are his recommendations, and not simply those of the attorneys on the case.

Now, I think maybe I ought to begin by simply noting that not only, of course, has the defendant been convicted, but it is our contention that even though Lipsky, an admittedly detestable man, played a very key role in the evidence we presented, even though the evidence in this case was absolutely overwhelming and unanswerable.

The final proof of how conclusive it is is that in two trials, and one appeal, and now there will be another appeal, no one has ever been able, no one has ever been able to come forth with any rational alternative explanation as to how this murder conceivably could have occurred or who was behind it and what conceivable motive they could have had, and that is why we say that the evidence notwithstanding Lipsky's infirmities as a man and as a witness was totally

overwhelming and, indeed, that is why two consecutive unanimous juries have had really no observable problem in resolving the fact of this case at all.

So I say this simply because an argument was made that perhaps our proof maybe was weak. Now, here in this case we are making a specific recommendation for several reasons. The first is that after all the defendant already has been sentenced on this case, and I think we are entitled, not that it needs any defense, but I think we are entitled to defend the prior sentence which we are suggesting be reimposed.

Judge Tenney had in front of him the same circumstances insofar as the murder is concerned, and obviously paid the same intense consideration to the matter that I know your Honor is now paying.

I know that a sentence in a case of this kind is even harder than sentences normally are. It seems to me that his sentence had nothing whatever to do with vindictiveness or with any irrational factor at all.

You have here a murder of a particularly atrocious kind, and I don't think I have to really expand on that particularly, except to point out that all of us know that most homicides in this country statistically occu between closely related people or close acquaintances, and

they are generally the product of a sudden and tumultuous passion of some kind. Very often the killers are thereafter filled with remorse, and there is no calculation involved in these crimes at all.

Here, of course, we have precisely the opposite kind of a killing. No killing from inter-family passion or anything of the kind. Very deliberate killing for the most calculated and objectionable motive one could have.

I think that furthermore when you talk of the purposes of sentencing, a murder committed for the purpose of interfering with the administration of justice I think is in a very special category. All murders are bad. However, here I think there is particular reason to say that a message should be sent to all professional criminals, and I think it is fair to call Mr. Pacelli a professional criminal in view of all the narcotics convictions and evidence we have in front of us, that if they in order to conceal their crimes have it in mind to murder people, if they are caught there will not be any withholding of the Court's power in dealing with this situation, and indeed entirely to the contrary.

Now, it is a hard thing to send anybody 30 years old, or 29 years old, to a long sentence of any kind. Patsy Parks, I believe, was 26 or 27. She has departed.

However, there remain a couple of hundred million decent people in this country who I submit are entitled to have people such as Pacelli out of the way. I am not saying that out of vindictiveness, I am saying the purpose of a sentence, one of the purposes is simply to incapacitate those who should not be in a position to act with such total callusness and total lack of any restraint of morality or even of common sense in not injuring and killing their fellow citizens.

Now, a legal issue has been raised, an alleged legal issue. In reality it is no issue at all. Pierce v. North Carolina stands for the proposition that when a conviction is reversed and there is a retrial the sentence on the retrial should not, of course, be longer than the sentence that was originally imposed.

Defense counsel is suggesting that a consecutive sentence here will in effect result in that. That isn't so at all. The sentence that we are suggesting, and with the greatest of dividends, because we recognize that this is a matter for the Court entirely, is the precise sentence that was imposed the last time. It is a life sentence consecutive with whatever other sentences he is serving.

The only thing that has happened is that in the interval between the time that Judge Tenney sentenced

Pacelli to life imprisonment consecutive to a twenty-year sentence he was already serving, Pacelli was in the interim, as it happens, convicted of participation in another narcotics conspiracy on which he received a fifteen-year sentence.

Now, in view of the argument that has been made here this morning, and I can't see why it has been made because it is really the only argument I think that could conceivably suggest itself to any defense counsel, the argument that, well, the Judges who sentenced Pacelli in the past were taking this murder into account, well now, Judge Tenney had the fact of the twenty-year sentence in front of him when he, after what must have been very careful deliberations indeed, concluded that a consecutive life sentence was appropriate.

The only new thing, as I say, is this fifteen-year sentence. And in view of the argument that is being made I simply think I should note, and Mr. Nesland has put them into our memorandum which we have submitted and which Mr. Curran has reviewed and approved, in that trial on which he received the fifteen-year sentence the evidence evidently revealed, just as an indication of the scope of his activities, 47 transfers of narcotics connected with Pacelli -- your Honor, I'm sorry, calling your attention to Page 8 in

our memorandum toward the bottom, our witnesses in that case testified to 47 meetings, conversations and sales or transfers, so I was a little wrong on that. But that is the --

THE COURT: I am sorry, would you read that again?

MR. EDWARDS: Yes, your Honor. It is the last sentence in front of the footnote on Page 8 that in that case in which Pacelli received a fifteen-year sentence witnesses described approximately 47 meetings, conversations and sales or transfers involving members of the Pacelli group.

I suggest that that indicates that that fifteen-year sentence justifies itself, and there is no reason to suppose that Judge Pollack was depending upon the facts of the murder.

Indeed, Sperling, the major co-defendant in that case, who had nothing to do with this murder, received a term of life imprisonment and four terms of thirty years imprisonment all running concurrently.

I should add, however, that it was the result of the proceedings in The Court of Appeals, and this is a correction at Footnote 8 in our memorandum, although those are the sentences that Judge Pollack imposed after the

trial, and, therefore, I think they are still relevant in indicating that Pacelli's sentence was independently justified by that case, as a result of the proceedings in The Court of Appeals Sperling will be resentenced. In other words, the case on him has been remanded for re-sentencing. The sentence of Pacelli, of course, stands.

Now I am going to refer to one other thing, even though it has nothing to do, and I apologize for this. I am referring to something that in my submission has nothing whatever to do with the sentence that your Honor has to impose this morning. Nonetheless I think your Honor will understand that I feel it necessary to not leave unanswered whenever it is raised this canard concerning my colleague, Mr. Feffer, and various other persons in the U. S. Attorney's Office.

I have responded to this canard fully on the record in chambers on several occasions in this case, as your Honor is aware. I would reiterate, however, one thing: That I have never seen a case in my career as a lawyer, and I have never heard of anybody else's case, in which anything was ever produced similar to this vast volley of correspondence between Lipsky and his attorney, Gwinn, confidential letters between a client and attorney, written over a long period of time under all sorts of

circumstances, and under circumstances where there was no reason to believe whatsoever that those letters would ever see the light of day.

Through some rather unusual circumstances they came into the public domain, and I tell you I think those letters taken as a whole exonerate, not that I think he requires it, because I think his innocence is clear anyway, that correspondence exonerates my colleague, Mr. Feffer, as thoroughly as anything could. Because there is a total absence, a total absence in a year and a half's correspon - dence between Lipsky and his attorney of the slightest suggestion that our office or anyone in our office, Mr. Feffer or anyone else, desired anything from Lipsky but the truth on any subject.

Indeed, your Honor may even recall the letters immediately following the mis-trial between Lipsky and his attorney in which Lipsky is saying the Government is mad at me because I gave inaccurate testimony, and I want to write Mr. Movillo and convince him that I was only trying to tell the truth. And so on, and so forth, ad infinitum.

Lipsky blaming everyone he can for that occurrence, his inaccurate testimony, and blaming our office, but not because we wanted him to give inaccurate testimony, blaming our office because he claims that another colleague of ours

didn't prepare him sufficiently on his arrangements with the Government so that he became confused and testified inaccurately.

In any event, I apologize for this. However, I know your Honor understands why I feel it necessary, and I will close by saying that that has nothing to do with this morning's proceeding, and I think I have said what I have to say concerning the sentence of Pacelli.

THE COURT: All right. Mr. Pacelli.

DEFENDANT PACELLI: May I say something please?

THE COURT: Yes.

DEFENDANT PACELLI: Mr. Edwards, the tapes conclusively prove that Feffer suborned perjury and obstructed justice. The tapes themselves. Because Feffer conceded that it's his voice on the tapes. He did have the conversations and they are there, they speak for themselves. So whatever he is saying is completely wrong. I can understand him to take this position, but let's not get ridiculous.

THE COURT: All right.

Mr. Pacelli, the imposition of sentence is always difficult --

MR. EDWARDS: Your Honor, I am exceedingly sorry.

THE COURT: I don't think we need any more on

this, Mr. Edwards.

MR. EDWARDS: No, your Honor, I don't intend to. There is one point however that I should have mentioned, and I am very apologetic. There are two counts, your Honor.

THE COURT: Yes, I understand that.

MR. EDWARDS: Our recommendation is that on the other count a five-year concurrent sentence is our recommendation, the only reason for that is that on the civil rights charge there is a legal issue which has never been resolved by The Supreme Court of the United States, therefore there is some conceivable relevance insofar as the sentence on the five-year count is concerned.

THE COURT: Thank you.

MR. EDWARDS: I apologize.

THE COURT: As I started to say, Mr. Pacelli, the imposition of sentence is always difficult. It is extremely difficult in this case. In imposing sentence I have in mind a number of things, and in particular I have in mind the two prior convictions in this court for very serious crimes.

Among the traditional and accepted general principles to be followed in imposing sentence I have in mind especially the need for protection of the public, the

need for deterrence of others.

The crime of which you have been convicted is a particularly deliberate, callous, brutal crime. Of course quite different from the two crimes which you have been previously been convicted of.

Therefore, I am going to sentence you to life imprisonment, which is consecutive with the two sentences which have previously been imposed upon you in this court on Count 1, and, on Count 2 I will sentence you to five years concurrentiy with the sentence on Count 1.

Now I am sure that you and your counsel are aware of the fact that you may file an appeal pursuant to the provisions of Federal Rules of Criminal Procedure 32(a)(2).

All right.

MR. DUKE: Your Honor, may I request that Mr. Pacelli's writ be continued for approximately a week to permit consultation concerning the appeal?

MR. EDWARDS: Your Honor, may I be heard on that?

THE COURT: Yes. We are talking about a writ which -- where is he presently --

MR. DUKE: He is in West Street. I suppose normally he would be sent back to Atlanta very soon.

THE COURT: All right, Mr. Edwards.

MR. EDWARDS: Your Honor, there have been problems

at the House of Detention, as your Honor is aware, and indeed seven major narcotic violators managed to make their way out of there a few months previous. I am sorry to say only one of them has been recaptured thus far. There have been other events of that kind.

Now we are talking about an appeal and not a trial, and an appeal is on the record and Mr. Pacelli is represented by lawyers of particular distinction when it comes to handling legal issues, and I don't believe his presence at the House of Detention is necessary. We would feel far safer concerning this situation if he were not there.

THE COURT: Well, Mr. Duke asked for a week. How about a day or two?

MR. EDWARDS: Well, very well, your Honor, and I say very well, frankly because I imagine it will take the Marshals a couple of days to move him out of there in any event.

THE COURT: All right. I will continue the writ for two days.

MR. EDWARDS: Your Honor, then could the writ be marked satisfied as of Monday, March 3?

THE COURT: Yes.

MR. EDWARDS: And, your Honor, simply for the

record I am not sure if this is necessary because I must confess I haven't attended many sentencings in the last couple of years, I think even though Mr. Pacelli is represented by counsel, perhaps as a precaution the record should be made that if he has no funds to retain an attorney, of course one will --

THE COURT: Well, I referred to the rule which covers that point.

MR. EDWARDS: I see.

THE COURT: The rule states, just to be clear I am quoting from Rule 32(a)(2) of the Federal Rules of Criminal Procedure, "After imposing sentence in a case which has gone to trial on a plea of not guilty The Court shall advise the defendant of his right to appeal and of the right of a person who is unable to pay the cost of an appeal to apply for leave to appeal in forma pauperus. If the defendant so requests, the Clerk of the Court shall prepare and file forthwith a notice of appeal on behalf of the defendant."

MR. EDWARDS: Thank you.

MR. DUKE: Your Honor, I don't wish to quibble, but if the writ is satisfied on Monday that will give me a weekend, really the weekend is not very valuable for the purposes for which I made the request. Quite frankly one

of the things that Mr. Pacelli wants me to discuss with him is who is going to take the appeal. It seems to me that essentially what the --

THE COURT: When we say the writ is satisfied on Monday, March 3, what time of day does that mean? What I am getting at, does that give him Monday as well as the weekend?

MR. EDWARDS: Your Honor, I will consent to that, and we will ask the Marshals not to move him out of there until Tuesday morning.

THE COURT: All right.

MR. DUKE: Very well.

THE COURT: Is there anything else?

MR. EDWARDS: I don't think so, your Honor.

MR. DUKE: No, your Honor.

THE COURT: All right.

* * *

Q Did you know his family, this type of thing?

MR. ROSNER: I am going to object to all of this. I don't see the relevance of all this.

THE COURT: Sustained.

Q Did you frequently visit Mr. Pacelli at his home?

A Yes, sir, I did.

Q Where did Mr. Pacelli live?

MR. ROSNER: That is objected to. Again, it seems to me it's the same question in a different form.

THE COURT: I will take it.

Q Where did Mr. Pacelli live?

A When I first knew Mr. Pacelli he lived at 40th Street and Second Avenue, in an apartment. And then he lived in New Rochelle, New York; Pelham Road.

Q Mr. Lipsky, I want to direct your attention to the fall of 1971, approximately September 28th. At that time were you still working for Vincent Pacelli?

A Yes, sir.

Q At that time did you have a meeting with Mr. Pacelli and an individual by the name of Luis Valentine or Ramon Lombardero?

MRS. ROSNER: Objection, your Honor.

THE COURT: Yes.

Q With an individual known to you as Ramon --

Ex A

MRS. ROSNER: Objection, your Honor.

THE COURT: The name of the gentleman was what? I think it ought to come out through the witness if anything is to come out in this respect.

Q Did you have a meeting with an individual known to you as Luis?

A Yes, sir.

Q And Mr. Pacelli, at the Yellowfingers cafe in New York City?

A Yes, sir.

Q Can you tell the Court and jury the name by which you know Luis, the full name?

MRS. ROSNER: Objection to the leading, your Honor.

THE COURT: No, I will allow it.

A I knew him as Luis, or Ramon, or Luis Lombardero.

Q Do you see Mr. Lombardero in this courtroom today?

A Yes, sir.

Q Will you point him out, please?

A The gentleman second from the left with the blue sweater and the zipper.

MRS. ROSNER: The identification is conceded.

Q Is Mr. Lombardero seated next to Mr. Pacelli?

A Yes, sir.

THE COURT: Mrs. Rosner has conceded identification.

elh7 Lipsky-direct

Q Do you recall approximately what time of day this meeting took place?

A Dinner time; 7 or 8 o'clock at night, sir. Somewhere around there.

Q Can you be certain as to the time of day, approximate time of day?

A Yes, sir, because Pacelli slept all day, most of the day, and got up late and we would have arranged previous meetings for certain places at certain times --

MR. ROSNER: I move to strike all this as not responsive

MR. PEFFER: Your Honor, we are on September 28, 1971, which is the first day alleged in the conspiracy.

THE COURT: That is not the objection. The objection is how he arrived at the time. He said he met him around dinner time.

Q Around dinner time?

A Around evening time, yes, sir.

THE COURT: That is sufficient.

Q Did you know Mr. Lombardero prior to this meeting at the Yellowfingers?

A Yes, sir.

Q How did you know him?

A He was an associate of Mr. Pacelli's --

MRS. ROSNER: Object to the characterization, your

Honor.

A He was a friend -- excuse me.

THE COURT: You can tell what the relationship is, what you saw them do; but you can't characterize it.

Q Why don't you tell us the relationship between Mr. Pacelli and Mr. Valentine?

MR. ROSNER: I am going to object, your Honor.

Q Limit it to the 28th. What did you see them do?

A Well, Pacelli and I were sitting in the Yellowfingers restaurant eating. Pacelli was describing to me that Luis Lombardero was coming over to obtain a certain quantity of--

MRS. ROSNER: Objection, your Honor. May we have a continuing objection to all hearsay statements?

THE COURT: Well, no. I think any statement that the defendant makes that he reports is binding on the defendant.

MRS. ROSNER: I'm sorry, your Honor. I didn't hear that.

THE COURT: I think any statement that he says the defendant made is perfectly admissible.

MRS. ROSNER: Your Honor, he is speaking about a statement of Pacelli while they were having dinner.

THE COURT: Pacelli's statement would not bind Valentine and Valentine does not adopt it. But certainly he can testify what Mr. Pacelli told to him insofar as it relates

to Mr. Pacelli.

Q Could you give me the question again, sir?

Q Yes. Can you tell us what took place at the meeting at the Yellowfingers?

A Pacelli and I were sitting there, Pacelli was instructing me -- when Luis would come to the Yellowfingers, to go to my apartment --

MRS. ROSNER: Objection, your Honor, again. Can we approach the side bar on this?

THE COURT: No. Overruled. Proceed.

A To go to my apartment and obtain a certain quantity of cocaine narcotics for Luis Lombardero.

3a

Q What took place next?

A Luis Lombardero arrived at Yellowfingers and I believe -- now, I believe he gave a key to Pacelli, car key--

MR. ROSNER: I object to what he believes, your Honor, and move to strike it.

THE COURT: Is that your best recollection? You are right, that is not the way to say it, believing.

Q Is that your best recollection as to what took place?

A No, sir. A car key was passed. I am not a hundred per cent sure whether the car key was passed to Pacelli from Luis or to me from Luis.

Q What is your best recollection?

A That there was a short conversation between Pacelli and Lombardero --

Q What is your best recollection as to who gave the car key?

MR. ROSNER: If he has any.

THE COURT: Well, he has to have a best recollection, based not upon speculation or guess --

A That Luis gave me the car key as we went -- we went to the side, started to walk away from the table a little bit, and Luis told me where the car was and gave me the key to the car and told me at that time something about, "Be careful because there is something the matter, the ignition on the

car is messed up and you have to be careful in starting the car because it is fouled up, loused up," in a certain way.

Q I am somewhat confused on this point: When Mr. Lombardero entered the restaurant, to whom did he give the key, to the best of your recollection?

MR. ROSNER: I object. It has been asked and answered, your Honor.

THE COURT: Overruled.

Q To the best of your recollection, to whom was the car key --

THE COURT: What was the transaction involving the key, from whom and to whom? Let's do it that way, all right?

MR. ROSNER: Yes.

THE COURT: There was a transaction involving the car key?

THE WITNESS: Yes.

THE COURT: What is your best recollection?

THE WITNESS: My best recollection is, which is very difficult for me to remember exactly where the car key was passed, from whom to whom, but I believe that the car key was passed from --

MR. ROSNER: Your Honor, I think --

THE COURT: No --

MR. ROSNER: I have an objection, your Honor.

THE COURT: You have objected to it and I have overruled it. It is his best recollection.

MR. ROSNER: We are not asking for his opinion.

Q Go ahead.

A That the car key was passed. I can't be sure exactly because of --

THE COURT: No, not because, what is your best recollection?

A That Luis Lombardero gave me the car key upon instructions which --

MR. ROSNER: I object to this unless he overheard this, your Honor. We don't want his conclusions or guesswork.

THE COURT: You are right.

Do you remember his exact words?

THE WITNESS: Yes. I was given the key, your Honor, by Luis, I was told about the condition of the car and where the car was parked.

THE COURT: You withdraw your objection?

Q What did you do next?

A I then left the Yellowfingers restaurant and went to where the car was parked. I believe it to be near the Yellowfingers, on Third Avenue.

Q Can you describe the car?

A Yes, sir. I believe it was a blue Pontiac.

Q Early model, late model?

A Not too old, a couple of years old, year or two old. The ignition was in the state that I just said, it was a little fouled up, you had to move the lever up and down a little to get it to start, with the key, and the back seat was torn up, torn out of the car, and the trunk was caved in from the outside, as if it had been hit by another car.

Q What did you do at this point?

A I got in the car and I drove up Third Avenue, to my apartment, driving carefully, as I had been instructed to do on all these type of transactions --

MR. ROSNER: I object to that move to strike, your Honor.

THE COURT: Yes, objection sustained, motion granted, and the jury is instructed to disregard the answer.

A Could I have the question again?

Q Just describe what you did after getting into the car?

A I drove up Third Avenue between where the Yellow-fingers restaurant is and where I had to go up Third Avenue-- I believe you have to pass the FBI building, and I drove carefully, going from one side of the street to the other, as I had been instructed to do --

MR. ROSNER: I move to strike this, your Honor.

THE COURT: Had you been instructed at the meeting that day to do that, drive carefully going by there?

THE WITNESS: I was instructed at all times--

THE COURT: I will strike out about at all times. The jury will disregard it.

A I was instructed --

MR. ROSNER: Objection, your Honor. Will you explain to this witness what it means to strike something?

THE COURT: You drove up Third Avenue?

THE WITNESS: Yes.

THE COURT: You can describe the manner in which you drove up Third Avenue, just do that.

A I drove up Third Avenue, passing where the FBI building was known to be, around 69th Street, going from one side of the street to the other side of the street, looking in the rearview mirror to see if I was being followed or tailed. I drove up to where my apartment was and went around, drove around the block, and parked the car.

Q Where did you park the car?

A I parked the car on 80th Street, on a pump, or fire hydrant, just off the corner of 80th Street and Third Avenue.

Q Where did you go then?

I left the car and I went up into my apartment, at 1420 Third Avenue.

Q Can you describe the clothing, if you can recall, you were wearing on that evening?

A To my best recollection, I was wearing a leather jacket, as I usually did, and a shirt and a pair of blue jeans or pair of pants, and a pair of boots.

Q Did you go to your apartment?

A Yes, I did.

Q Your apartment is in 1420 Third Avenue?

A Yes, sir.

Q Which apartment in that building is yours?

A Well, on the mailbox --

THE COURT: The question is, which apartment in that building is yours.

A The mailbox says 1A but the building has it down as another number, has it down as not 1A, as something else.

Q Whose apartment was this? Was it your apartment?

A This apartment was originally in the name --

MR. ROSNER: I object to that as not being responsive, whose it was originally.

THE COURT: Whose apartment was it?

THE WITNESS: I was told to move into this --

MR. ROSNER: Move to strike, your Honor.

THE COURT: Sustained.

Q Did you find this apartment yourself?

A No, sir, I did not.

Q Who got the apartment for you?

A Mr. Pacelli.

Q Was the apartment in your name?

A No, sir.

Q Whose name was it in?

A Well --

MR. ROSNER: If he knows.

Q If you know.

A The rent bills on the apartment said Wilfredo Cintron and the name on the mailbox was a Harold or H. Stella, S-t-e-l-l-a.

Q Who is Stella?

A A friend of Pacelli's, I believe.

MR. ROSNER: I move to strike what he believes.

THE COURT: Motion granted. Disregard it.

Q Do you know who Stella is?

A No, sir, I do not.

Q Did you pay for the rent on this apartment?

A Yes, sir, I did.

Q Will you tell the court and jury what type of work you were doing for Mr. Pacelli on September 28, 1971?

A I lived in that apartment and in that apartme Pacelli stored all his cocaine and heroin narcotics and I was what was --

MR. ROSNER: I move to strike that as not being responsive.

THE COURT: No, overruled.

A I forget where I was. I'm sorry.

THE COURT: You said cocaine and narcotics were stored in this apartment.

MR. ROSNER: Your Honor, may I approach the side bar?

MR. FEFFER: Your Honor, I asked a very simple question, as to what type of work the witness was doing for Mr. Pacelli, and I believe the witness was in the middle of his answer and I would like to have him finish it.

THE COURT: Come up, please.

(At the side bar)

MR. ROSNER: Quite obviously, your Honor, the basis for the objection is that the prosecutor is eliciting evidence of other crimes not charged in the indictment. The answer is not responsive and is most prejudicial, when he relates it in this fashion, and I most respectfully move to strike the answer, and if the prosecutor is going to elicit an answer, it has to be a responsive one. None of these narcotics were

seized and they are not named in the indictment.

MR. PEPPER: Your Honor, I would ask you to read the first count in the indictment and specifically to see what it charges. It quite clearly charges a conspiracy in which Vincent Pacelli was involved and that Lipsky is a defendant and member of that conspiracy to sell and distribute narcotic drugs, without naming an amount.

MR. ROSNER: I think it says cocaine and he is talking about heroin and --

THE COURT: I will allow the answer to stand.

MRS. ROSNER: Barry Lipsky is testifying narcotics was stored in his apartment. How does he know what they were?

THE COURT: You can ask him.

MR. ROSNER: That is an opinion, a characterization by him, your Honor.

THE COURT: You can go into it.

(In open court)

THE COURT: Next question.

Q I will repeat the question to you: will you tell the court and jury what type of work you were doing for Vincent Pacelli on September 28, 1971?

THE COURT: Now, you understand the question?

THE WITNESS: The type of work --

THE COURT: You were doing for Vincent Pacelli, and

direct your response to the specific question. What type of work were you doing for Vincent Pacelli on September 28, 1971?

THE WITNESS: I was driving --

Q No, in the apartment.

A I was preparing a quantity of cocaine narcotics for delivery to Luis Lombardero.

Q Can you describe what you did in the apartment?

A What I did in the apartment?

Q On this occasion.

A Yes, sir. I went into the apartment, which was-- which had been --

THE COURT: No, just what you did.

THE WITNESS: Went into the apartment, securely locked the door, took out all the equipment which is necessary --

THE COURT: Describe the equipment. We don't want conclusions, just the factual situation of what you did there.

THE WITNESS: I took out what is called a triple beam balance scale. It weighs grams of a substance, in gram weight. I took out pieces of brown paper, took out what is called a spatula, that you turn pancakes with, that sort of thing, spoons, some plastic bags, and a plastic bag sealing machine, which can be bought at Bloomingdale's, to air-tight seal substances such as you would put in your freezer.

I took out all this equipment and a pair of scissors.

Let me think -- and I took out a few other bags and a quantity of cocaine.

MR. ROSNER: I object to his characterizing this as a quantity of cocaine.

THE COURT: Do you know how much cocaine you took out there? You said a quantity of cocaine--

THE WITNESS: I was instructed --

THE COURT: What did you take out that day?

THE WITNESS: What did I weigh out to take out of the apartment?

THE COURT: Yes.

MR. ROSNER: May we approach the side bar?

THE COURT: No.

MR. ROSNER: I think you are misunderstanding the point of my objection, most respectfully.

Q Go ahead.

A The qeustion?

Q The Judge asked you with respect to the quantity of cocaine.

A I believe it was a half a kilo of cocaine--

MR. ROSNER: I move to strike his beliefs or opinions in this regard. He can describe what he took out but unless he analyzed it, this is an opinion from a man not qualified to render one.

THE COURT: Your best estimate is that is the amount of cocaine you took out?

THE WITNESS: Yes, your Honor.

THE COURT: When you say "I believe" you may well be meaning yourself "This is my best thinking," but that is not permitted in the courtroom. That is the reason for the objection, which is very valid and I am not

finding fault with it.

A I don't recall exactly -- I took out a half kilo or whole kilo of cocaine, which would be either 500 grams or 1000 grams.

Q What did you do with that quantity of cocaine?

A I weighed it out as per instructions, put it on the scale, weighed out the cocaine, put it on the brown paper, shook it up in the brown paper, just shook it up in the brown paper a lot, moved the spoon through it to make sure there was no hairs in it or any plastic little pieces of the bag that fall off into the substance.

Then I placed that quantity of cocaine narcotics into one bag, which I then sealed on that machine, the sealing machine, placed that bag into another bag which I sealed also on the sealing machine, and then placed the whole quantity of cocaine into a brown paper bag, which was the end of that cocaine transaction, inside the apartment.

Q Can you recall the purity of the cocaine?

MR. ROSNER: I object, unless he subjected it to laboratory analysis.

Q Do you know of your own knowledge the purity of that cocaine?

MR. ROSNER: How does he know?

THE COURT: You can go into that on cross-examination.

MR. ROSNER: He is not free to characterize the white powder, if there was such, as cocaine.

MR. PEFFER: If your Honor would like--

THE COURT: I have overruled the objection. You may proceed.

A Excuse me?

Q Can you tell the Court and jury what the purity of that cocaine was that you delivered on that date?

MRS. ROSNER: Objection, your Honor.

THE COURT: Overruled.

A It was as pure as the cocaine that Pacelli would get in.

MRS. ROSNER: Objection.

MR. ROSNER: I object to this and move to strike.

THE COURT: Motion is granted. That answer is stricken.

The question is, do you know the purity of that cocaine you had there on September 28th. That is the only question before you.

A It was as pure --

THE COURT: Do you know the percentage of purity?

THE WITNESS: Percentage-wise, your Honor, I don't

knew it, percentage-wise.

THE COURT: All right, next question.

Q Did you dilute the cocaine at that time with any other substance?

A I don't believe that I diluted that particular package of cocaine at that time, sir.

Q Can you tell the Court and jury how one dilutes cocaine?

MR. ROSNER: I object to this, your Honor.

THE COURT: Sustained.

Q Have you yourself ever added substances to cocaine to dilute it?

MR. ROSNER: Objection.

MRS. ROSNER: Objection.

THE COURT: If you want to go into his familiarity with the business and ask, I will do it. Right now he is not qualified, if that is the basis of the objection, which I think it is.

Q Have you ever yourself diluted cocaine?

THE COURT: Mr. Feffer, the objection is raised as to whether or not he has had any experience in the field. If you want to go into his experience and see whether or not he is capable to tell us as to how you dilute cocaine, and all of that, and if he is found to be qualified, I will

permit him ot answer.

Am I correct, Mr. an Mrs. Rosner?

MR. ROSNER: Yes.

MRS. ROSNER: Yes, your Honor.

Q How many times in the past--

THE COURT: What is your familiarity in the field dealing with cocaine prior to September 20, 1972?

THE WITNESS: You mean 1971?

THE COURT: Yes.

THE WITNESS: My familiarity?

THE COURT: And experience, dealing with cocaine.

THE WITNESS: From the April up until-

MR. ROSNER: No,your Honor, I think --

THE COURT: You asked him to go into his experience. If you want to withdraw the objection on the other thing, I will accept that--

MR. ROSNER: There is a further objection to this question, your Honor.

THE COURT: I am putting it to you now. Do you want him to go into his further qualifications?

MR. ROSNER: I withdraw the objection.

THE COURT: You may testify-- Mr. Feffer,you can ask the question.

Mrs. Rosner, your objection is withdrawn?

MRS. ROSNER: Yes.

Q Will you tell the Court and jury how you diluted cocaine?

A Yes, sir. You add a substance of some type of white powder to the cocaine, such substance being boric acid, powdered lactose, powdered dextrose, something called mannitol. These are the only dilutants of cocaine or heroin that I am familiar with.

Q Is relatively pure cocaine used by people on the street-- pure cocaine?

A On the street?

Q Yes. Street level people.

A Pure cocaine?

Q Right.

A No, sir.

Q After preparing this quantity of cocaine, what did you then do?

A I had it, as I have said, in a paper bag, and I placed it inside my shirt, under my jacket I had on. I locked up my apartment,went back to the car, and-- went back to the car and I was always under --

THE COURT: No, what did you do?

A I went back to thecar and tried to place the cocaine package in the trunk of the car, and I saw that

back of the car, the trunk was all smashed in. So I went around and placed the package of cocaine under the front seat of the car.

Q This would be the driver's side?

A I believe passenger side, sir.

Q Then what did you do?

A I got back into the car and I drove back toward the Yellowfingers. I parked the car and I locked up the car, as I was always instructed to do, and I went and returned to the Yellowfingers Restaurant.

Q Can you tell the Court and jury what took place at that time?

A I was asked by Pacelli, "Did you get that cocaine for Luis?"

MRS. ROSNER: Objection to the hearsay as to my client, your Honor.

THE COURT: It is admitted solely against Mr. Pacelli.

Q What did Mr. Pacelli say to you?

A "Did you get the goods, did you get the cocaine for Luis?"

I said, "Yes, I did."

MRS. ROSNER: Objection, your Honor.

THE COURT: Who was present at that time when you

were there?

THE WITNESS: In the Yellowfingers?

THE COURT: Yes.

A Myself, Pacelli and Luis Lombardero.

THE COURT: All right. Overruled.

Q Can you tell the Court and jury what conversation was had between you, Mr. Valentine and Mr. Pacelli when you returned to the Yellowfingers Cafe?

A I was asked by Pacelli, "Did you get that package of cocaine for Luis?"

I said, "Yes, I did."

Then I said-- then they said- I gave the key, I believe, the car key, to Luis, and then told him where the car was parked.

Q And he left then?

A Yes, then he left.

Q Are you still employed by Vincent Pacelli today?

A No, sir.

Q When did you stop working for Vincent Pacelli?

MR. ROSNER: I object to this, your Honor.

THE COURT: Just a date.

Q Just a date.

A I'm sorry?

THE COURT: What date did you stop working for

Q Did you ever have any conversations with this man Luis concerning narcotics?

A Yes.

Q Tell us what that is, please, and where it was and when, if you can.

A Also in Hippopotamus, Luis had a conversation with me and he said, "Listen, Barry, do you think you can give me some coke? Because I am not earning any money now, and they keep putting off this trip for me to South America, and if I could get some coke from you and Vinnie, I can go ahead and make a few dollars on my own while I am waiting around for them to send me away."

I said, "You know, Luis, I can't give it to you on my own. I have to ask, talk to Pacelli, and I will be in touch with him and I will let you know."

He said, "Well, he's a hard person to get hold of." He said, "When you get hold of him have him call me up at the Henry Hudson Hotel."

THE COURT: Approximately when was this?

THE WITNESS: This is also some time in the summer or early fall, '71.

Q Did there come a time in September of 1971 that you had occasion to deliver narcotics to Mr. Lombardero?

Ex B

A Yes.

Q Tell us about that, please.

A Yes. I was in the Yellowfingers restaurant with Pacelli, and we were wating. Pacelli said to me, "Luis' coming over here. We're going to give him some coke, either a quarter of a ki or half a ki of coke," and I said, "All right."

Then Luis arrived and sat down at the table with us.

Q Was there a conversation at that time?

A Yes.

MR. BRIZEL: Objection, Judge.

THE COURT: Overruled.

Q What was the conversation, please?

A Pacelli and Luis had a conversation, and then Pacelli said, "Go over to the side; get up from the table, go over there with Luis and Luis will tell you about the car."

So I got up from the table with Luis, Pacelli remained at the table. We went over a few tables away and Luis gave me a car registration slip and a set of car keys, and he said, "Listen, there is a blue Pontiac parked nearby," he told me where it was. He said, "The trunk is smashed in, you can't use the trunk." He also

told me something else was the matter with the ignition and I said, "All right."

He gave me the keys and the registration and he went back to the table and I walked out of the restaurant.

Q Was there any conversation with anyone there concerning driving?

A Yes.

Q With whom was that conversation?

A Pacelli told me to -- "Be careful, drive carefully. Watch out for being followed."

Q What did you do?

A Well, I -- after I had the conversation, got the car keys and registration from Luis, I went out of the restaurant, located the car, got in the car.

Q What kind of car was it?

A It was a blue Pontiac with a smashed-in trunk.

I got in the car and drove up Third Avenue and parked near my apartment. I went up to my apartment, mixed up the quantity of coke Pacelli --

Q Excuse me. Did you have a practice with respect to where you parked your car near your apartment?

A Yes.

Q Where would you park?

A Whenever the pump was empty, the fire hydrant, I just parked there.

Q Then what happened?

A I went up to the apartment and mixed up the quantity of coke, and I put it in a paper bag and put it inside my coat that I was wearing and went down to the car; locked my apartment, went down to the car, placed the bag under the seat of the car, and drove the car back to the vicinity of Yellowfingers, locked the car, and went back to the restaurant.

Pacelli and Luis were there. I sat down and I gave the keys and registration to Pacelli under the table, and I told Pacelli where the car was parked and where the coke was in the car.

Pacelli handed the registration and the keys to Luis and told him where the car was and where the coke was in the car, and Luis got up a minute or so later and left Yellowfingers.

MR. BRIZEL: Objection, your Honor.

THE COURT: Overruled.

Q Did there come a time in October, 1971 when you and Mr. Pacelli had a transaction with one Nick Lugo,

Nicholas Lugo?

A Yes.

Q Would you relate that to the jury, please?

A Yes, I was at Yellowfingers again with Pacelli, we were sitting eating, and he said to me, "Nicky's coming over here. We're going to give him some coke."

We were sitting in an area where you could see right outside to the windows, see the street. So a few minutes later I saw Nicky Lugo walk up to -- up 60th Street, outside the restaurant. Pacelli said, Sit here, wait for me." He got up and went outside Yellowfingers.

He met with Nick Lugo outside Yellowfingers. He had a conversation with him. and Nick, Nicky, handed something to Pacelli. Pacelli put it in his pocket. Then Nicky walked away. Pacelli walked back inside and sat down with me.

He said to me, he handed me under the table a set of car keys and registration, and he said, "There is a car parked nearby," and he told me what kind of car and where it was parked. He said, "I want you to go up to our apartment, take the car, go up to your apartment and prepare," I think it was, "a half a ki of coke for Nicky."

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Q Mr. Lipsky, the Yellowfingers Restaurant about which you testified has large windows, does it not?

A Yes, it does.

Q Picture windows?

A Yes, it did at that time.

Q Yes, at that time, 1971. And when you are sitting in there you can easily see in or out, can you not?

A That's true.

Q Did you testify on a prior occasion in court that you and Mr. Pacelli in late September, 1971 met a man named Valentine at Yellowfingers?

A Did I testify about that?

Q Yes.

A Yes, I have testified about that.

Q And that you and Mr. Pacelli had dinner that evening at Yellowfingers?

A I believe we were having something to eat. I don't know if it was dinner. We had something to eat there.

Q After you had dinner did you testify that you thereafter drove to your apartment and got some cocaine in a car and returned the car and came back to Yellowfingers?

Ex C

A Returned the car where, Mr. Duke?

Q Well, left it somewhere in the neighborhood of Yellowfingers and then returned the keys to Yellowfingers?

A That's correct.

Q And you turned the keys over to somebody?

A That's correct.

Q Did you testify that Mr. Pacelli was still there when you returned?

A That's correct.

Q Were you arrested that night, Mr. Lipsky?

A Was I arrested that night?

Q Yes.

A No, sir.

Q Were you ever arrested between April, 1971 and March 1, 1972?

A Between April, 1971 and March of '72?

Q Yes. You were arrested on March 2nd, you testified about that, but prior to that arrest.

A Between April --

Q From that time back to April, '71, were you ever arrested?

A Between April, '71 and March of '72 was I arrested?

cs19 D'Ambrosio-

THE COURT: All right. Thank you, Mr. D'Ambrosio.

(Witness excused.)

MR. FEFFER: The Government calls Joseph Nunziata.

- -

J O S E P H N U N Z I A T A , called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FEFFER:

Q Officer, by whom are you employed?

A By the New York City Police Department.

Q How long have you worked for the New York City Police Department?

A Approximately 15 years.

Q What have your general duties been with the New York City Police Department?

A Working on drug trafficking and the arrest and apprehension of middle and upper echelon narcotic dealers.

Q Directing your attention, Officer, to September 28, 1971 were you on duty at that time.

A Yes, I was.

Q What was your assignment on that day?

Ex D

A The investigation of the defendant Luis Valentine

Q Do you see Luis Valentine in this court?

A Yes, I do.

Q Can you identify him, please?

A He is seated at the table with the brown leather coat and blue shirt.

Q At what time did you establish surveillance on the 28th of September?

A Approximately 4 p.m.

Q Can you tell the Court and jury what happened after that point?

A After that point, at approximately 4.30 p.m. that day, a Buick had arrived on the scene of the Henry Hudson Hotel, which is located at 57th Street between Eighth and Ninth Avenue. At that time this buick showed up with two known narcotic --

MR. ROSNER: Objection, your Honor. I move to strike.

THE COURT: Sustained.

Q Officer, I think you are testifying to --

MR. ROSNER: I don't think we need any remarks from Mr. Feffer.

THE COURT: Mr. Rosner, just give us a chance to clear up the confusion, will you, please?

Ladies and gentlemen, you will disregard what Mr. Nunziata has said.

You, Mr. Feffer, will clarify your question.

Q You may have misunderstood. The date I asked about was September 28, 1971.

A Yes. At 7.45 that date the defendant Valentine -- I observed him exit from the hotel and opposite the hotel enter a 1969 blue Pontiac Grand Prix with plate number PCA 952, I believe, New Jersey.

Q Did you subsequently learn whose car that was?

A Yes.

Q Whose car was that?

A It belonged to one Alberto Gonzalez. I believe it was a New York address in New Jersey somewheres.

Q What happened then?

A From that point a surveillance, a mobile surveillance was established on the defendant Valentine. My further observations was that of seeing the defendant Valentine enter the blue Pontiac with a key and drive the car from that point to 61st Street and Third Avenue and park on 61st Street, approximately 20 feet east of Third.

I further observed the defendant exit from the

automobile at 61st Street and Third, lock the car with a key, and proceed on foot to 60th Street and Third Avenue to a cafe on that corner called Yellowfingers.

Q Did you see Mr. Valentine enter the Yellow-fingers Cafe?

A Yes, I did.

Q Can you tell us what took place from that point on?

A At that point the defendant Valentine met with a male unknown to me and a conversation ensued between the defendant and this male and briefly during that conversation the defendant Valentine handed an object to this unknown male, this male that was unknown to myself, and immediately thereafter the unknown male left the Yellowfingers Cafe and proceeded on foot to the vehicle, the blue Pontiac that the defendant had parked on 61st Street off Third Avenue.

I further observed the male enter the vehicle with a key and from that point drive the vehicle.

Q Can you describe for the Court and jury the manner in which the defendant drove this car?

A This was the male, the unknown male.

Q I'm sorry, I meant the unknown male. Excuse me.

A From that point, he pulled out from the parking space where Valentine had parked the car earlier and proceeded north from 61st Street and Third Avenue, up Third Avenue, and at this point this male drove at an extremely slow speed, in the beginning to the righthand side of the street. He allowed traffic to go by him on a couple of different occasions and caught up with traffic, pulled over to the left and the right as if he had been double parking, stop, start up again and drive at varying speeds abnormally, I would say.

MR. ROSNER: I move to strike the characterization.

THE COURT: Overruled.

A From that point this male proceeded to East 81st Street and Third Avenue, at which time he made a lefthand turn from Third Avenue onto East 81st Street, into East 81st Street to Lexington Avenue. At Lexington Avenue he proceeded left again going southbound. He came to 80th Street which was a block north of where he made the former lefthand turn, and made another left turn as if -- not as if. What he was doing was circling the block. One time he circled it completely as to the original lefthand turn.

The next time he came back around the block,

again driving in the same manner. He came to 80th Street between Lexington and Third Avenue and closer to Lexington Avenue he parked the vehicle on a hydrant, I believe, I think around number 150 East 80th Street.

At this point I observed this male come out of the vehicle and coming in my direction. I had pulled up and parked closer to Third Avenue.

Q Can you tell the Court and jury what the unknown male was wearing at that time?

A Yes, he had on, I believe, dark bell-bottom trousers and a leather Eisenhower-type jacket which was almost hip level, with approximately eight, nine buttons on the jacket.

Q Were these buttons open or closed?

A They were open at the time. As he came towards me walking, I noticed that his walk was of a swaggering type motion, carefree type walk. He continued towards me and I changed positions at varying times and I further observed him come to the corner of Third Avenue and 80th Street walking yet and proceed north on Third Avenue.

About midway on Third Avenue between East 80th Street and East 81st Street he entered the premises 1420 Third Avenue. Approximately 20 minutes later I observed this male exit from 1420 Third Avenue, but at this time

his jacket was completely buttoned. All the buttons that were unbuttoned prior to had been buttoned at this time and he was walking noticeably different then. When he came out of the building his arms were very close to his body and he walked at a little slower pace.

Q Where was Detective D'Ambrosio during this time; do you know where he was?

A We spoke for a brief period of time.

THE COURT: How? By what means?

THE WITNESS: We spoke face-to-face, your Honor.

THE COURT: Where was that?

THE WITNESS: In the vicinity of 80th Street and Third Avenue on the corner.

THE COURT: All right.

THE WITNESS: We changed our positions. We had formerly set up different surveillance positions. This observation now from that point was that this male walking now south on Third Avenue proceeded to 80th Street on foot, turned into 80th Street back towards the direction of where he had parked the parked the blue Pontiac.

At this point all I observed now was the male walking back in that direction.

Q Do you know at this point where Office D'Ambrosio was stationed?

A No. I was up towards the blue Pontiac.

Q What was your next observation?

A My next observation was that of the male in the vehicle alongside of my vehicle which had been parked on 80th Street close to Third Avenue. I observed the male not quite alongside of me but a little further forward of my position which my vehicle was parked at the time. From this point the male driving the Pontiac drove to second Avenue and proceeded south on Second Avenue, again driving in the same manner in which he had driven north on Third Avenue earlier in this observation, that in which he pulled over to the righthand side a couple of times, the lefthand side a couple of times, as if he had been double parking, drove at varying speeds, had traffic catch up to him and then pass him and then he would catch up to traffic again and so on up to 61st Street and Second Avenue.

At that point he parked on the northwest corner of 61st Street and Second Avenue in front of a funeral home at that location. I further observed the male exit from the vehicle, lock it with a key, and check the windows on the top of the driver's side, check the door,

walk around the rear of the vehicle, check the trunk, check the door on the non-driver's side of the vehicle. He walked away from the vehicle about 10, 15 feet, came back and rechecked the doors and the windows again and the trunk. At this point he walked towards me.

Q Officer, at this point did you notice whether the unknown male's jacket was still buttoned?

A No, at this point his jacket was open, as it had been on my initial observation of the male, and he was now walking in the same manner in which I had initially observed him walk, in his swaggering motion, carefree-type walk.

At this point I observed him further walk south on Second Avenue up to 60th Street and then proceed west on 60th Street Street and walk in the general vicinity, towards the general vicinity of the Yellowfingers Cafe. At this point he walked past the side door entrance to the Yellowfingers, approximately two or three feet past the door on the curb side of the street, of the sidewalk, rather, excuse me, on the same side of the street as the Yellowfingers Cafe.

Upon passing that door I further observed that he darted to his left. He moved in a very fast motion towards this door on the side door entrance to the

RAMON LOMBARDERO, a defendant herein, called as a witness in his own behalf, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BRIZEL:

Q Is that your true name, Ramon Lombardero?

A It is.

Q Where were you born?

A San Juan, Puerto Rico.

Q When?

A February 18, 1936.

Q And what was the name that you born with?

A Raymond Lombardero.

Q Now, what is your education?

A I finished high school.

Q Where?

A In San Juan, Puerto Rico.

Q Now, have you or are you indicated in this case, to your knowledge, under the name of Luis Valentine?

A Yes, I am.

Q Is that the reason we have been calling you Luis Valentine throughout this case?

A Yes, it is.

Ex E

home. This is about 2 or 3 o'clock in the morning. To tell the truth, I don't even know where I was. So I say I better keep the guy and drive home because it was dark in the streets.

Q Speak a little louder. It is hard to hear you.

A He told me to take him to a place where he was living, and it was a little dark and everything and I might not be able to catch a cab at this time of the night. So I kept the car and took it to the Henry Hudson Hotel, in the back of the Henry Hudson Hotel, and I went upstairs. I left the car there and next morning I got up early and went out to do some personal business I had to take care of.

Q What is the date when you say the next morning?

A September 28th.

Q On September 28th?

A Yes.

Q Continue.

A So I went out looking for him. I went to the Yellowfingers Cafe because he told me previously, and told me, "If I'm not in the Yellowfingers Cafe I'll be in Paddy Quinn's Bar," which is two places I had

gone before.

Q Why were you looking for him?

A I had to give him back his car.

So I told him to pick it up first and he said to bring it because he is waiting for somebody.

I went to the Yellowfingers Cafe, parked the car, went inside looking for him. He wasn't there and I met Barry Lipsky there.

Q When you say you met him, could you describe that, what you mean by that?

A I walked in, he was there. So he said hello and then he was sitting at a table and he asked me --

Q Is that the first time you met him?

A I seen himpreviously. Maybe two, three, five times.

Q When?

A During that time.

Q September?

A September, yes.

Q What happened at that time?

A He asked me to have something to eat and I says, "Yeah, that's what I want, to have something to eat, but I'm also looking for Alberto Conzalez." He

said he didn't know him. So I says, "Well, I might as well have something to eat." He says, "Could you do me a favor and drive me over to my apartment? I want to change clothes." I told him, "Why don't you drive yourself over to the apartment and I'll stay here and get something to eat and you bring me the car back." He said, "Okay."

He left and came back. He gave me back the keys and I say, "I'll see you." I walked out, I got in the car and I drove to Paddy Quinn's Bar.

Q Before you loaned him that car is it a fact that you knew he was always around these bars?

A Yes, I've always seen around. Any time I went on the East Side he was always in the bars on the East Side, restaurants.

Q Before you loaned him Mr. Gonzalez' car did you know that Barry Lipsky had been convicted of crimes?

A No. I didn't know nothing about his background at all.

Q Did you know that Barry Lipsky was part of a narcotics conspiracy?

A No, I didn't know nothing about him.

Q So then what happened? Did he come back to you?

in if there was anything to Lipsky's story. I don't deny, there is no reason to deny, that Lipsky had narcotics at 1420 Third Avenue. That is clear, he did. That is not in dispute. It is not in dispute that he sold narcotics. The dispute is, did Vincent Pacelli have anything to do with it. I suggest to you that all the surveillances and all the investigatory sources would have produced some evidence to corroborate it. Well, there was a surveillance of Mr. Lipsky by police officers, and that is why I bored you yesterday with that transcript that I read to you. There was a surveillance, September 28, 1971. The gist of that testimony that I read to you is this: Two detectives, Nunziata and D'Ambrosio, followed a man named Valentine to Yellowfingers Restaurant. Nunziata saw Valentine go into the Yellowfingers, meet with an unknown male, hand something to the unknwon male, the unknown male leaves, gets into Valentine's car, drives to 1420 Third Avenue, returns, goes back into Yellowfingers and Valentine comes out.

The unknown male was Barry Lipsky. Now, I brought out that testimony. The Government didn't bring it out. But let me read you something from the transcript in this trial. I am asking Mr. Lipsky these questions:

THE COURT: What page?

MR. DUKE: Page 346.

EVP

"Q. Did you testify on a prior occasion in court that you and Mr. Pacelli in late September 1971 met a man named Valentine at Yellowfingers?

"A. Did I testify about that?

"Q. Yes.

"A. Yes, I testified about that.

"Q. And that you and Mr. Pacelli had dinner that evening at Yellowfingers?

"A. I believe we were having something to eat. I don't know if it was dinner. We had something to eat there

"Q.. After you had dinner, did you testify that you thereafter drove to your apartment and got some cocaine in a car and returned the car and came back to Yellowfingers?

"A. Returned the car where, Mr. Duke?

"Q. Well, left it somewhere in the neighborhood of Yellowfingers and then returned the keys to the Yellowfingers?

"A. That is correct.

"Q. And you turned the keys over to somebody?

"A. That is correct.

"Q. Did you testify that Mr. Pacelli was still there when you returned?

"A. That is correct."

Now, ladies and gentlemen, this trial, Mr. Pacelli's

own trial, you didn't hear Mr. Lipsky say anything about Mr. Pacelli and Mr. Valentine and Yellowfingers. You know why? Because now Mr. Lipsky, I suggest to you ladies and gentlemen, Mr. Lipsky now knows that he was under surveillance by these detectives. He now knows that he can't tell that story anymore because he can be refuted by the detectives.

He testified that there was a clear view in and out of the Yellowfingers. You could see who was there, who was not. These detectives didn't see any Vincent Pacelli in there because he was not there, so Lipsky just leaves that out of the story.

MR. LAVIN: Your Honor, I object and ask that whole thing be stricken. It is a gross misrepresentation of the record.

THE COURT: The jury will understand.--

MR. LAVIN: And the facts.

THE COURT: The jury will understand that each lawyer is going to express his theories and his ideas. The jury will be guided by what the evidence is in the record. The speculations and conjectures of the lawyers on each side may be interesting, but the ultimate test of what is in the record is the evidence, and that you will turn to your recollection for.

MR. DUKE: Now, ladies and gentlemen, that is the